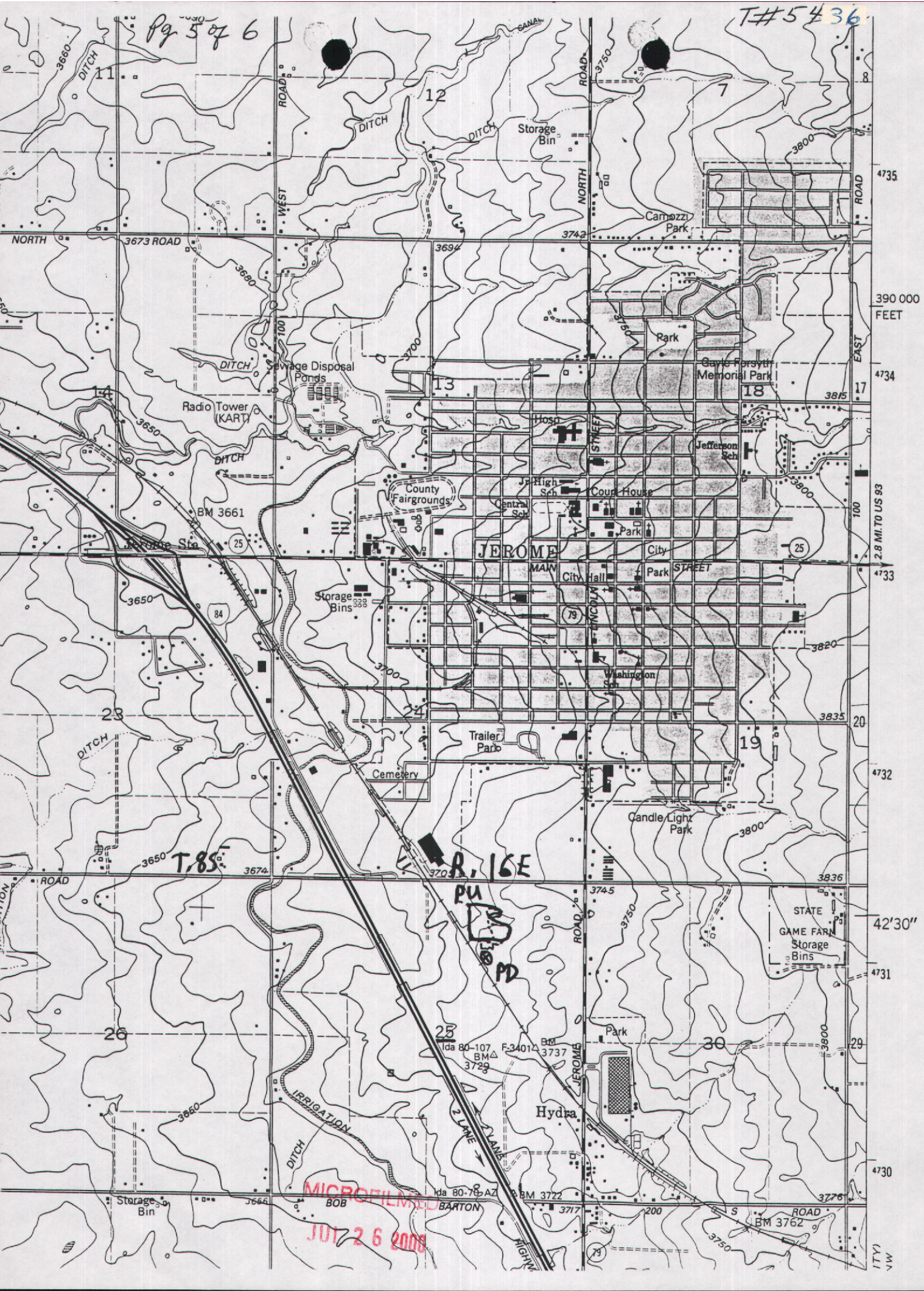


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JUL 26 2006

6/1/99
Called Williams' petition
They will send
2nd Send etc.
AM

No CK.

RECEIVED
JUN 11 1999
Department of Water Resources
Southern Region

ROBERT E. WILLIAMS
FREDERICKSEN, WILLIAMS & MESERVY
Attorneys at Law
117 South Adams Street
P. O. Box 168
Jerome, Idaho 83338
Telephone: (208) 324-2303
Idaho State Bar No. 1693
Attorney for Petitioner, City of Jerome

BEFORE THE IDAHO STATE DEPARTMENT OF WATER RESOURCES

In Re	Case No. 5436 Trust 5476
Application for Transfer of Jerome Cheese Company	**PETITION FOR INTERVENTION**

The City of Jerome, an Idaho municipal corporation, through its attorney, Robert E. Williams, of the law firm of Fredericksen, Williams & Meservy, hereby petitions the Idaho Department of Water Resources for an order allowing it intervenor status in the above-referenced proceeding. In support of this Petition, the Petitioner shows that:

1. It is an Idaho municipal corporation with a mailing address of 152 East Avenue A, Jerome, Idaho 83338.

2. Petitioner has a direct and substantial interest in this proceeding as follows:

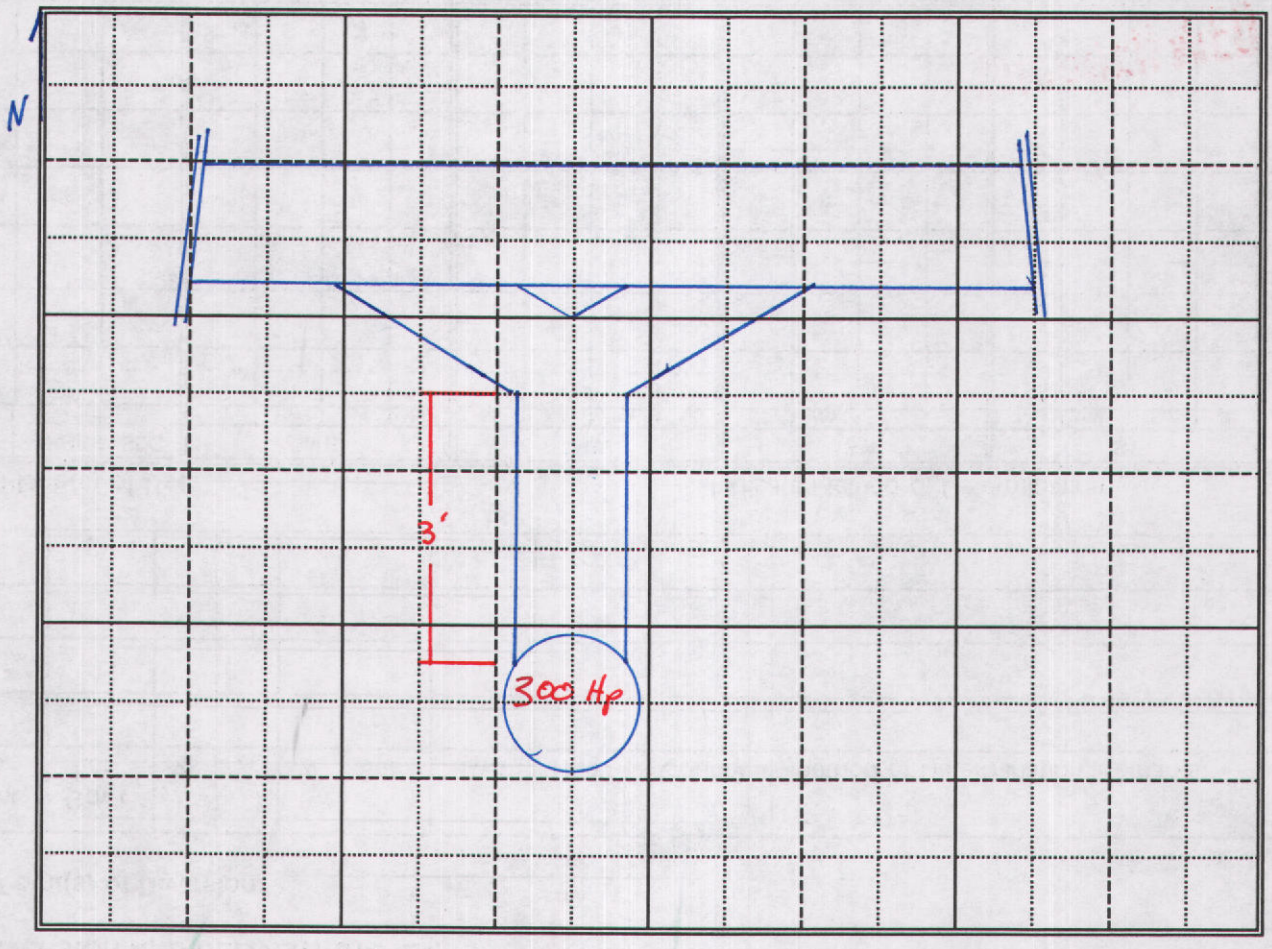
A. Jerome Cheese Company (referred to as "Applicant" in this Petition) conducts a cheese manufacturing operation on real property contiguous to an existing boundary of the City of Jerome (referred to as "Petitioner" in this Petition).

B. The Applicant's real property is presently the subject of an annexation ordinance under consideration by Petitioner.

C. The Applicant presently is connected to and utilizes both potable water and waste water treatment services provided by Petitioner.

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3. **Delivery System Diagram**: Indicate all major components and distances between components. Indicate weir size/ditch size/pipe i.d. as applicable.



Scale: 1" = _____.

____ Copy of USGS Quadrange Attached Showing location(s) of point(s) of diversion and place(s) of use (required).

X Aerial Photo Attached (required for irrigation of 10+ acres)

____ Photo of Diversion and System Attached

4.

Well or Diversion Identification No.*	Motor Make	Hp	Motor Serial No.	Pump Make	Pump Serial No. or Discharge Size
	GE	300	unknown	Johnston	10" discharge

*Code to correspond with No. on map and aerial photo

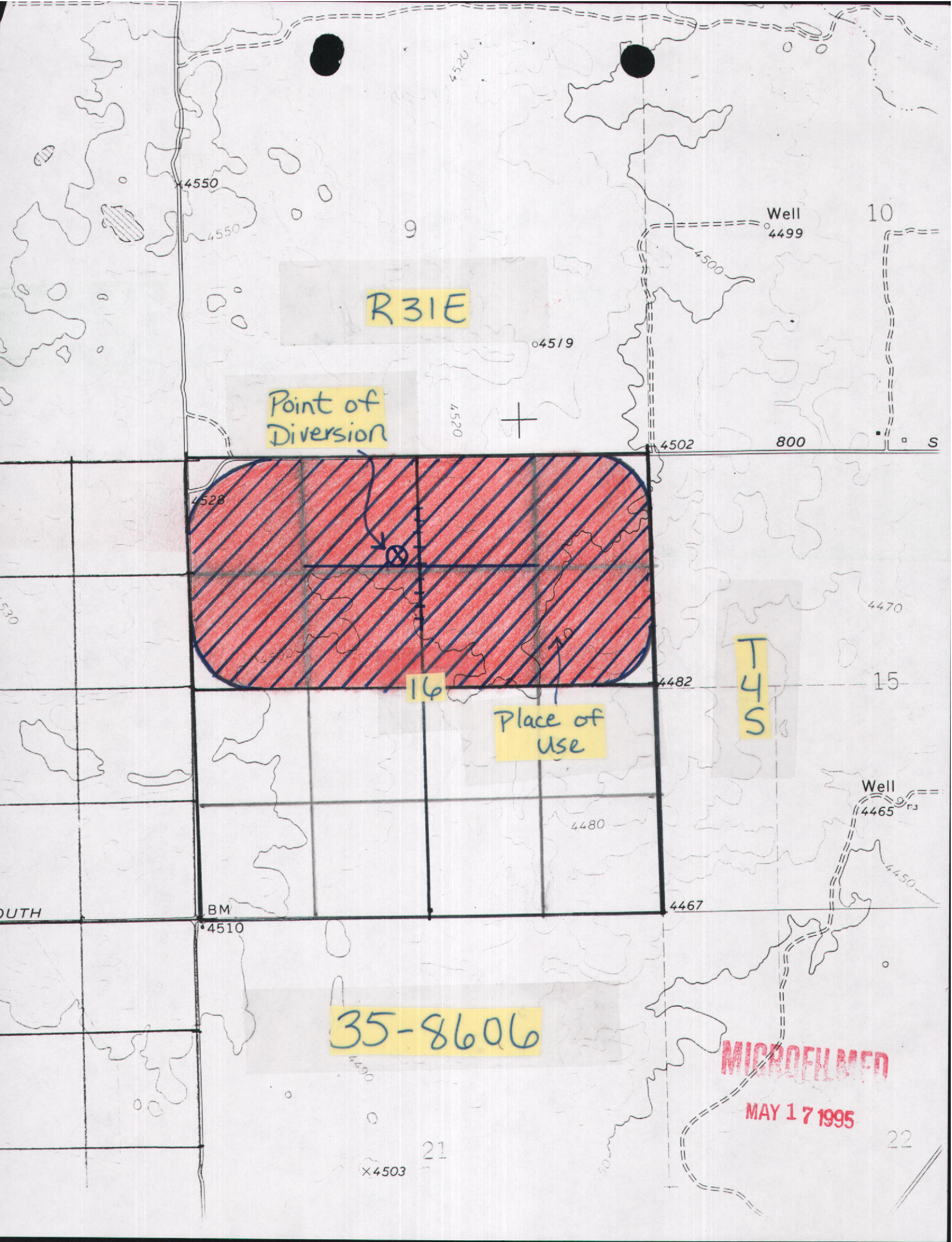
D. FLOW MEASUREMENTS

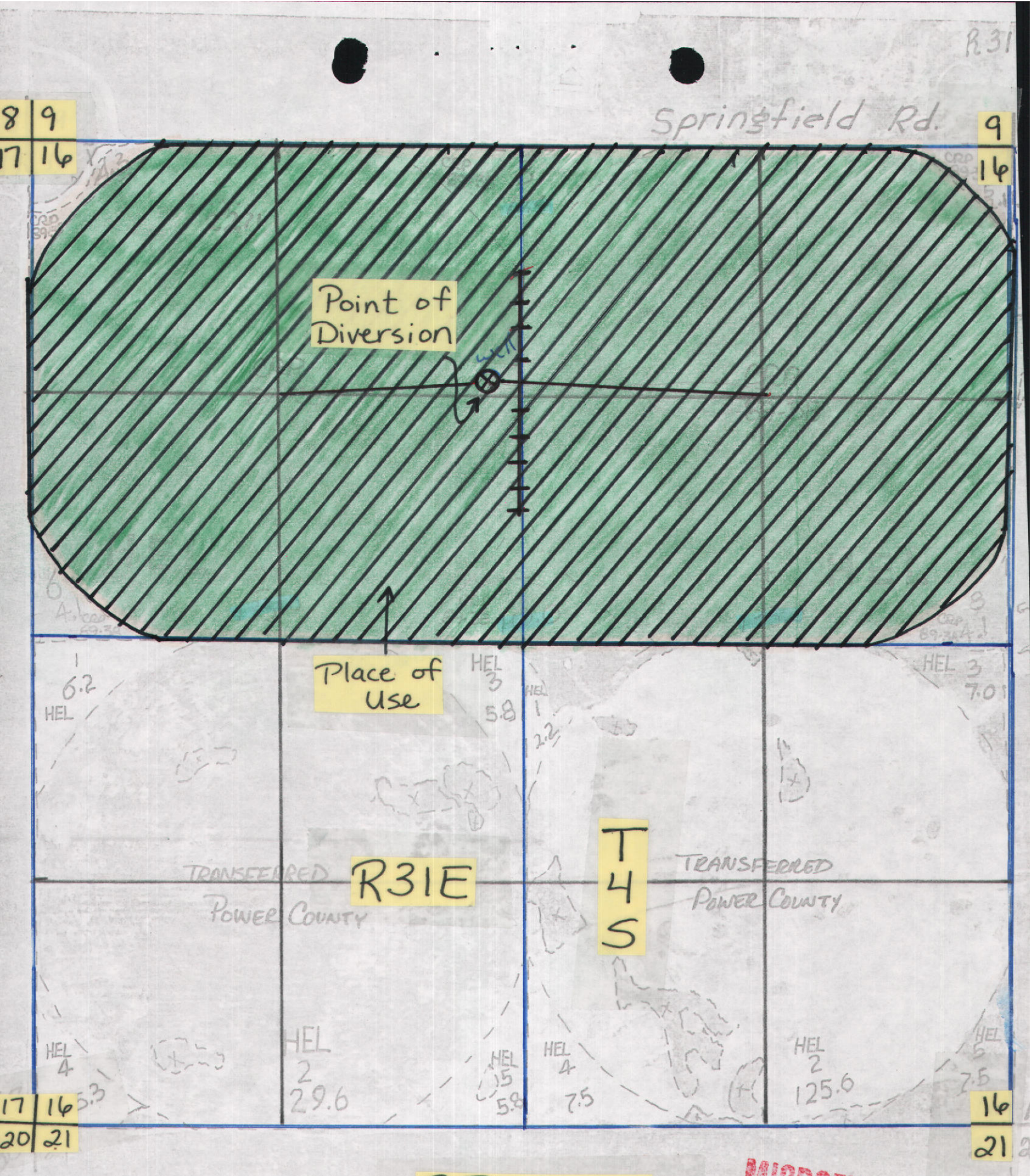
1.

Measurement Equipment	Type	Make	Model No.	Serial No.	Size	Calib. Date
well Probe	single wire	dympic	500	—	500'	

2. **Measurements:** Static water depth 110'
Operating pressure 80 psi

WATER RIGHTS
MAY 17 1995

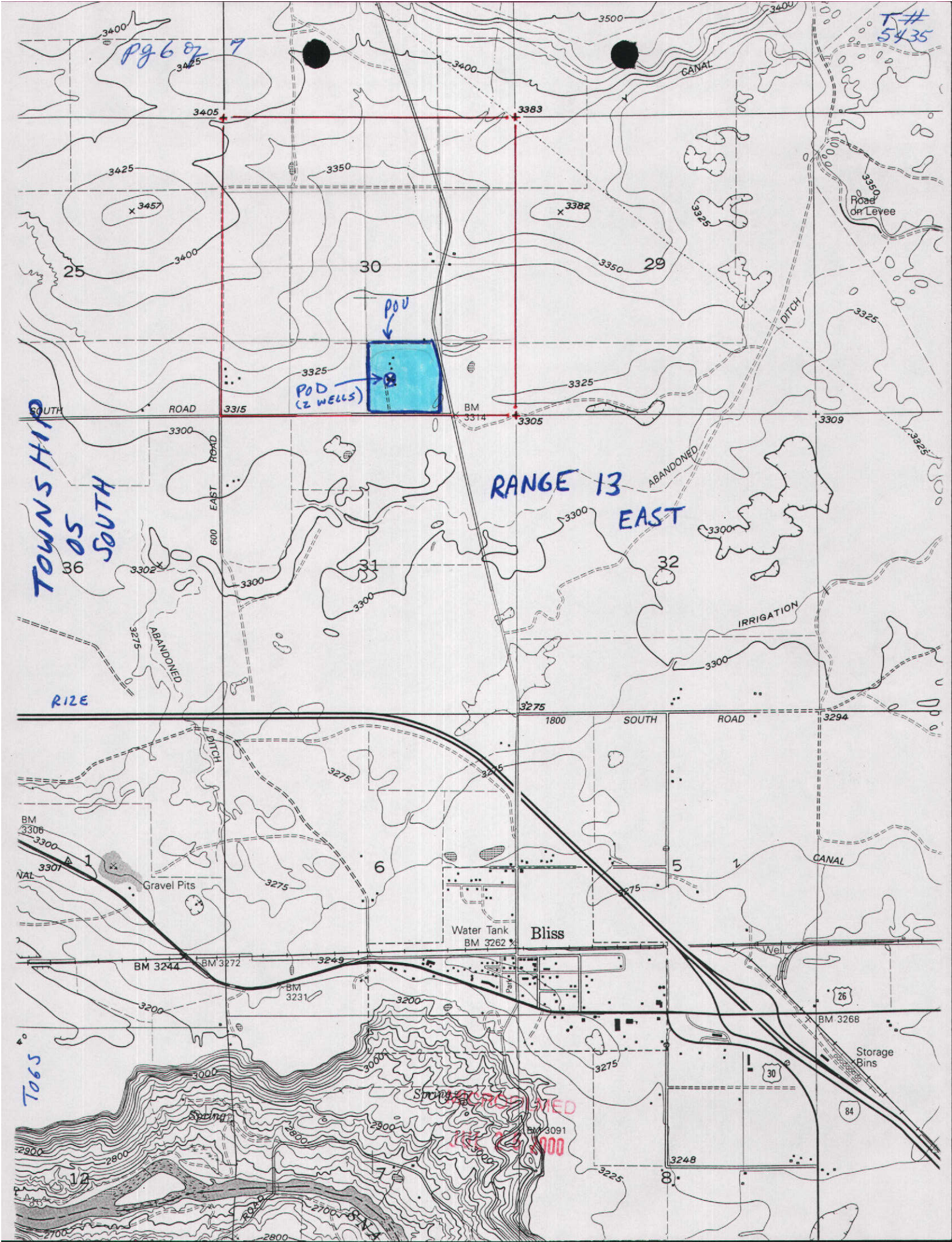

R31E
Point of Diversion
Place of Use
16
T 4 S
35-8606
Well
4499
Well
4465
BM
4510
4550
4520
4519
4502
800
4528
4482
4480
4470
4467
4503
9
10
15
21
22
MICROFILMED
MAY 17 1995



35-8606

MICROFILMED

MAY 17 1995

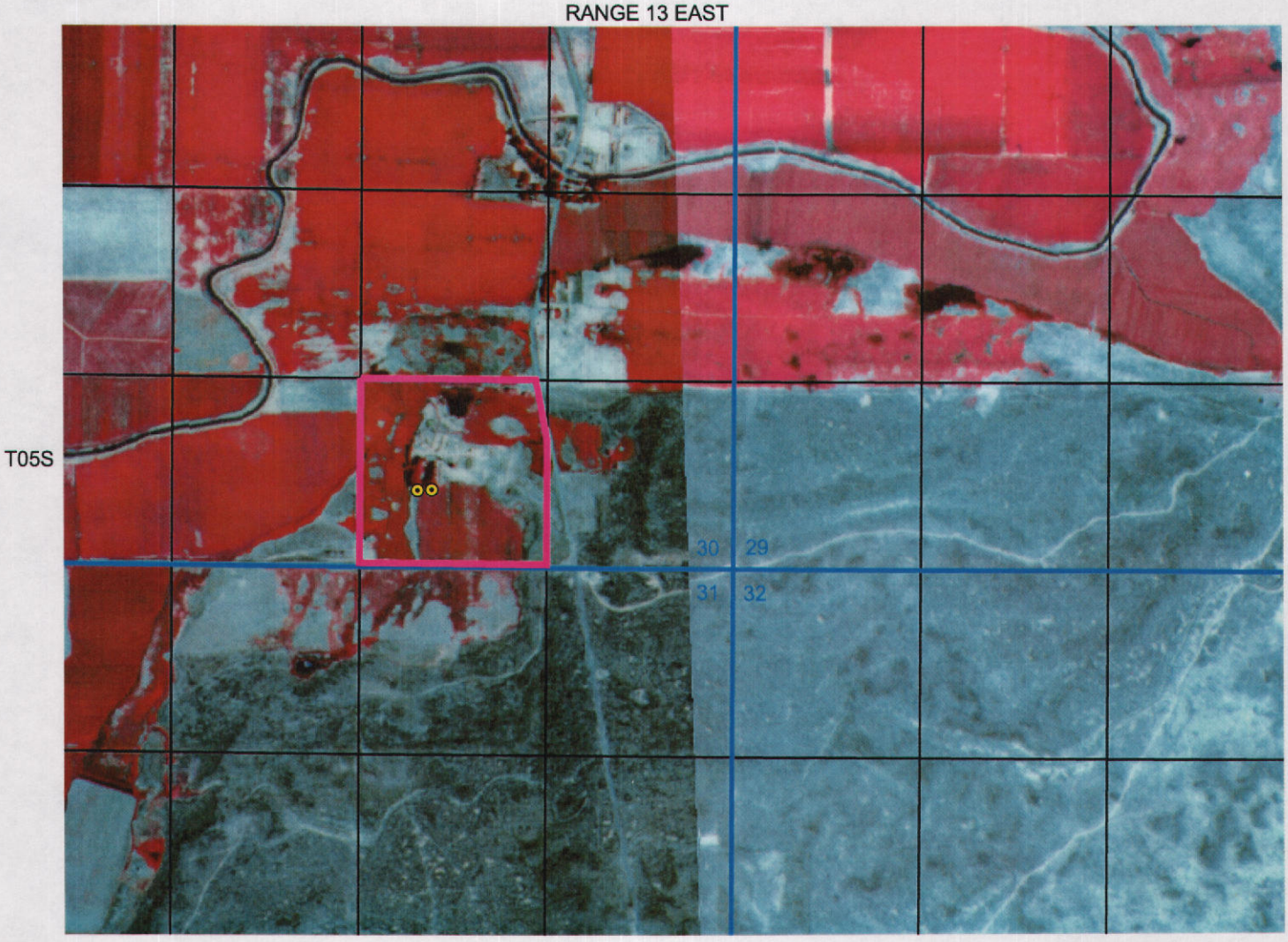

T# 5435
Pg 67
POU
POD (2 WELLS)
TOWNSHIP 05 SOUTH
RANGE 13 EAST
SOUTH ROAD
EAST ROAD
ABANDONED
DITCH
CANAL
IRRIGATION
Road or Levee
Gravel Pits
Water Tank
BM 3262
Bliss
BM 3244
BM 3272
BM 3231
BM 3268
Storage Bins
Spring
BM 3091
RECEIVED
OCT 24 2000
RIZE
T06S

IDAHO DEPARTMENT OF WATER RESOURCES

TRANSFER # 5435

T35-08606B & T37-11191

POST TRANSFER CONDITIONS



POINT OF DIVERSION

RESULTING PLACE OF USE

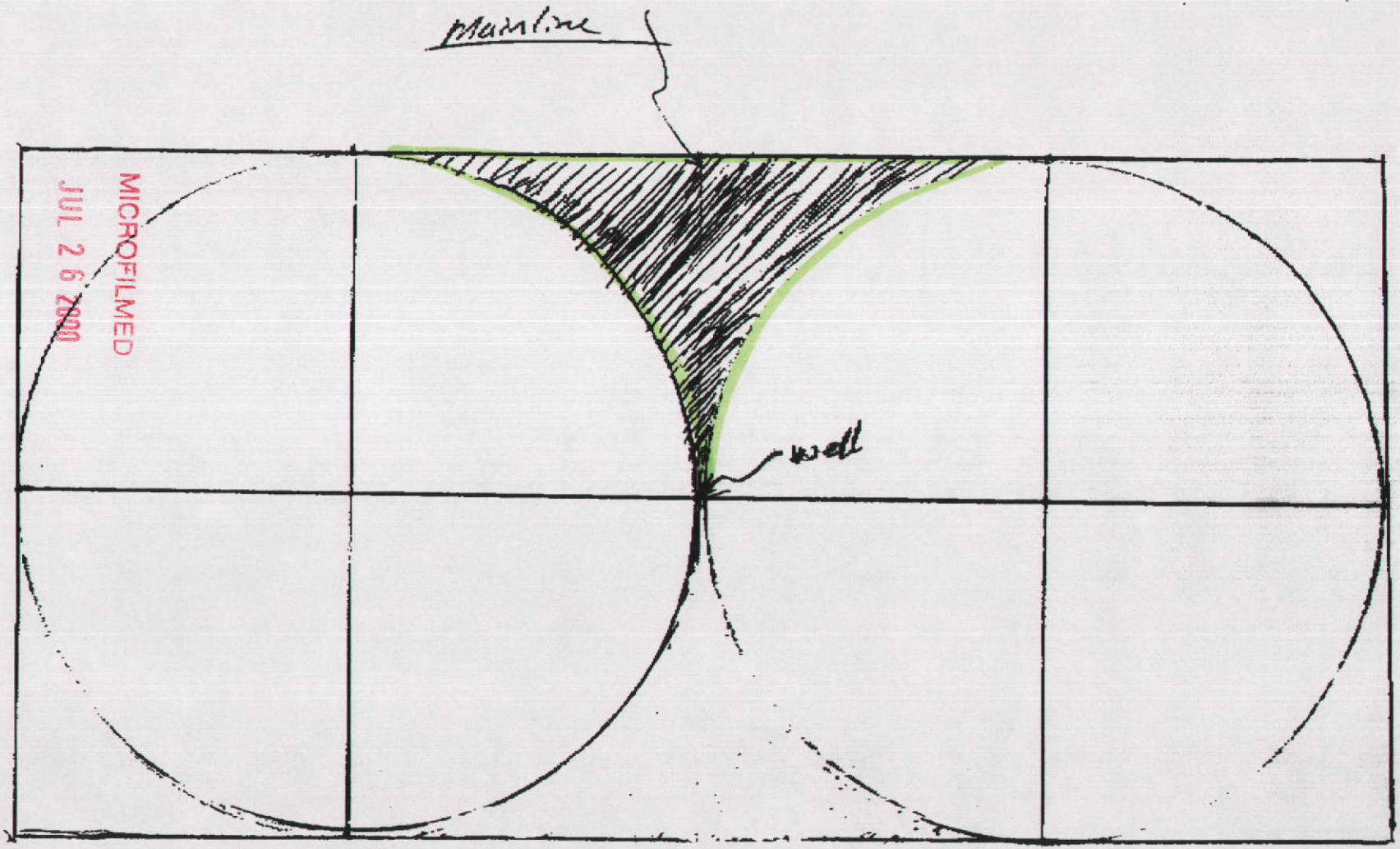
QUARTER/QUARTER LINES

SECTION LINES

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JUN 6 2000

PLACE OF USE PRESENTATION
1987/1988 NAPP PHOTOGRAPHY
DATA ENTRY BY COREY SKINNER

Ground to be dried up — crosshatched areas in NE¼ NW¼ - 7.5 acres
NW¼ NE¼ 7.5 acres.



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JUL 26 2000

Roy Hincks
35-08606 Total water right T4S R3IE N½ Sec 16
[illegible]

T-#54435

MAR-04-99 10:15 AM DEL.KOHTZ 208 825 5063 P.01

ACTION REQUIRED

FROM: Allen Merritt

TO: Norm Young

Here is a draft NOV for Wybenga Dairy as you requested. Attached is also Corey's memo and other copies of documents out of the transfer # 5435 file. I have not yet scheduled a conference but intend to have one 9/9/99 @ ~~Noon somewhere in Gooding Co.~~ Gooding, City Hall 8/25/99

as Wybenga Dairy).

Based upon the department's investigation and understanding of the law, the Director makes the following Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT

1. On July 30th, 1999 a department representative conducted a field examination and determined that Wybenga Dairy is diverting water in excess of water right 37-11191 from well(s) located within the SW1/4SE1/4 of Section 30, Twp.05S, Rge.13E, B.M. for use in the dairy at the same location.

2. Water right 37-11191 is limited to 13,000 gallons per day, a rate of 0.06 cfs and the historical beneficial use of the right is estimated to be 5.9 acre feet per annum.

3. The current use at the dairy is near 25,000 gallons per day, diverted at a rate of 0.11 cfs and the total annual volume is near 28.0 acre feet per annum.

4. Since February of 1999 Wybenga Dairy has been aware of the requirement to obtain a water right to expand use beyond what right 37-11191. On March 8th , 1999 Steve &/or Darla Wybenga filed application for transfer 5435

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JUL 26 2000



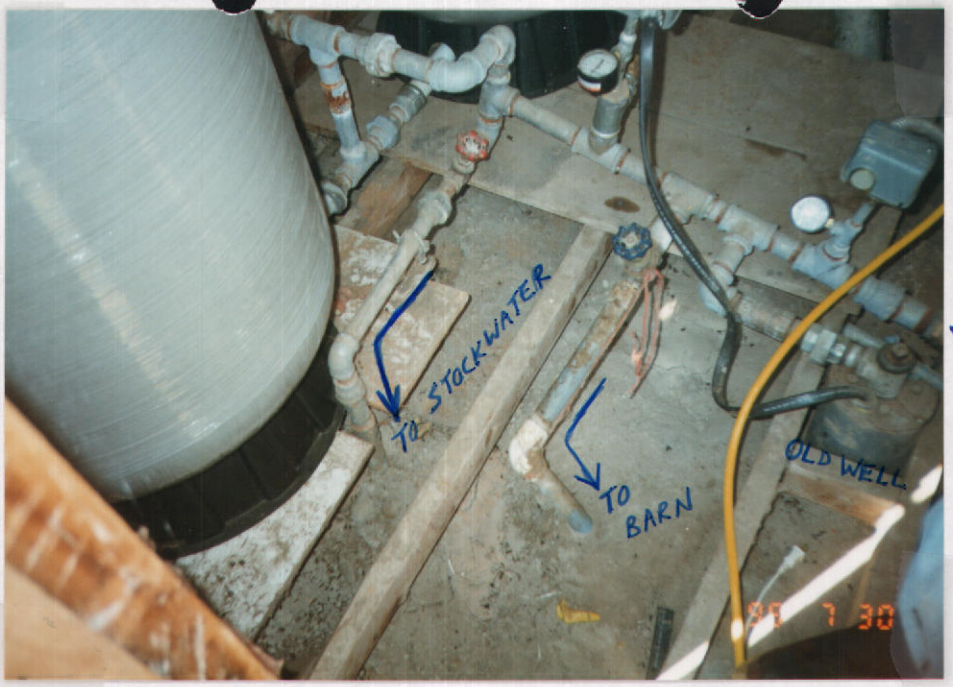
ABOVE: View of Wybenga Dairy Property from the south side of the property, looking towards the northwest. The roadway in the foreground is the south edge of Section 30 (T05S, R13E). The location of various structures are noted for reference. Note the presence of jersey cows and holstein cows in the foreground.

BELOW: View of yard and surrounding area at Wybenga Dairy looking towards the northwest. The yard, and surrounding property, is reported to be irrigated with canal water. The old, original, well is located inside the well house. The home (indicated) is served by the same well(s) as the dairy operation.



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WYBENGA DAIRY PHOTOS
7/30/99
C. SKINNER



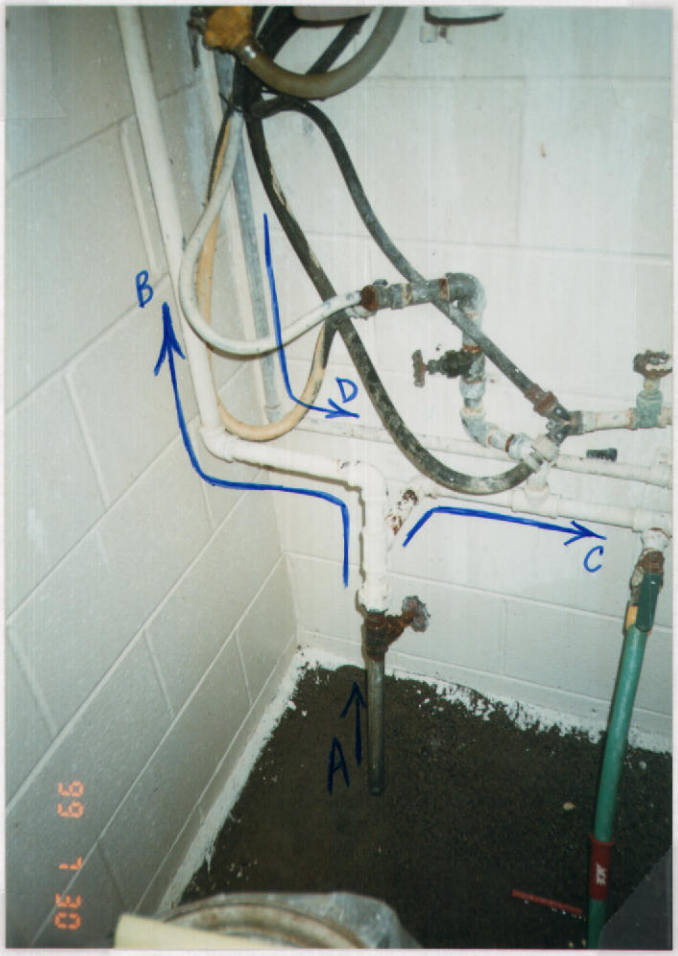
ABOVE: View inside of well house, showing the old, original well, and the piping network that supplies water to the dairy operation from the new well.

BELOW: View of new well (drilled under permit 37-97-S-0033-000) which serves as the source of water for the dairy. The GPS site tag was placed on the tree, indicated by arrow.



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WYBENGA DAIRY PHOTOS
7/30/99
C. SKINNER



RIGHT: View of pipe from water system in well house entering the dairy barn. Pipe labeled **"A"** is pipe coming in to barn from the well(s). Pipe labeled **"B"** is pipe that carries water to the hot water heater. The pipe labeled **"C"** is a pipe that conveys cold water to the barn. Pipe labeled **"D"** is pipe that carries hot water, from water heater, back to the dairy barn for use. The pipe labeled **"A"** is about one inch in outside diameter. Mr. Wybenga said that the pipe has a ¾ inch inside diameter.



LEFT: View looking in milking parlor inside the dairy barn. It was observed that water was not used to prep the cows. However, note water hoses and nozzles hanging from the ceiling and the wet floor in the parlor. Mr. Wybenga said that the area was cleaned twice a day, primarily by scraping, and then washing with water.

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WYBENGA DAIRY PHOTOS
7/30/99
C. SKINNER



ABOVE: View looking east, along the north edge of the dairy barn. Note bulk tank visible along the dairy barn. Another bulk tank was present inside the dairy barn. The corrals, north and east of the dairy barn, hold a few hundred head of cows.

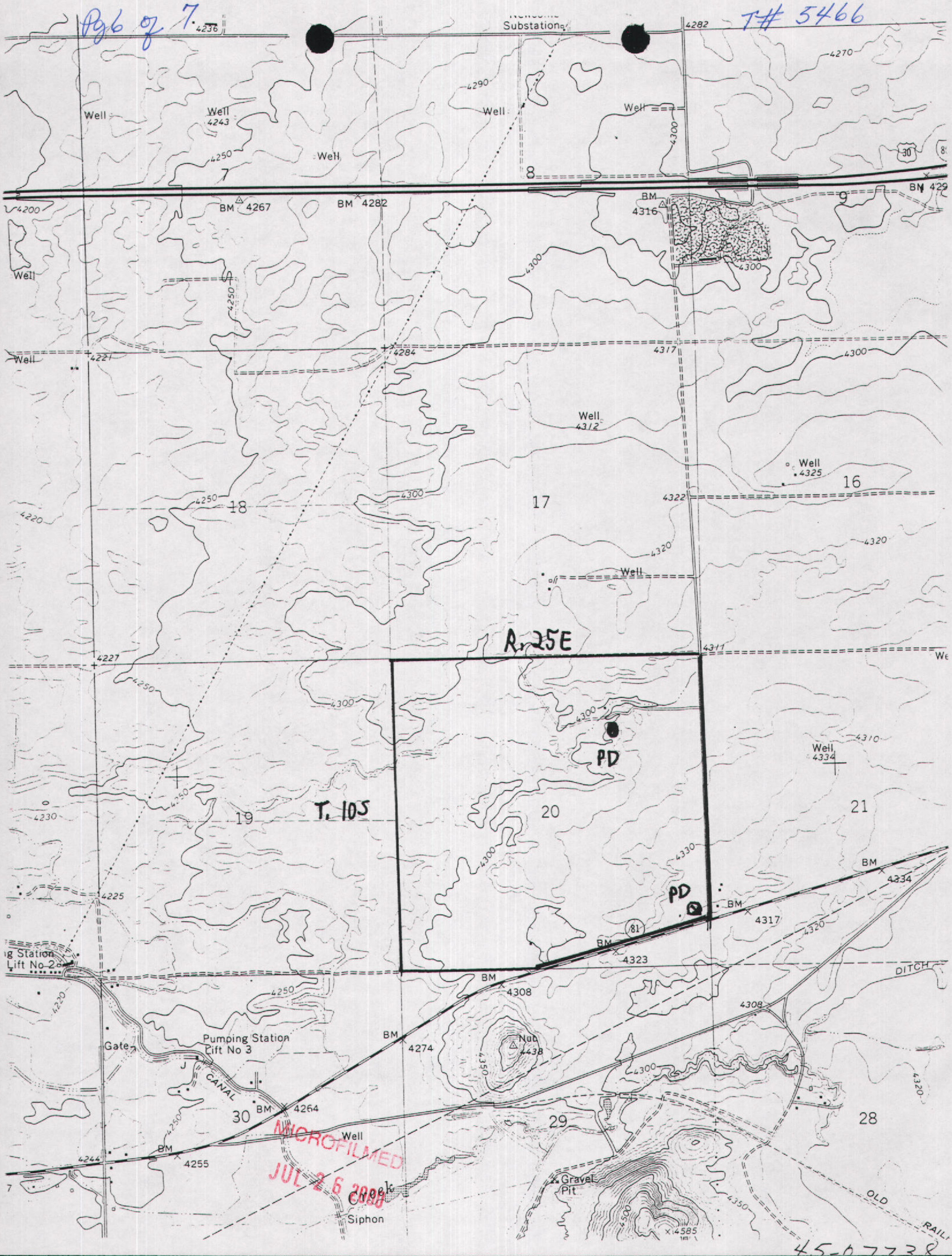
BELOW: View of milk cows in the corrals north and east of the dairy barn. Mr. and Mrs. Wybenga said that they do not keep any calves at the dairy.



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WYBENGA DAIRY PHOTOS
7/30/99
C. SKINNER

Pg 6 of 7 T# 5466

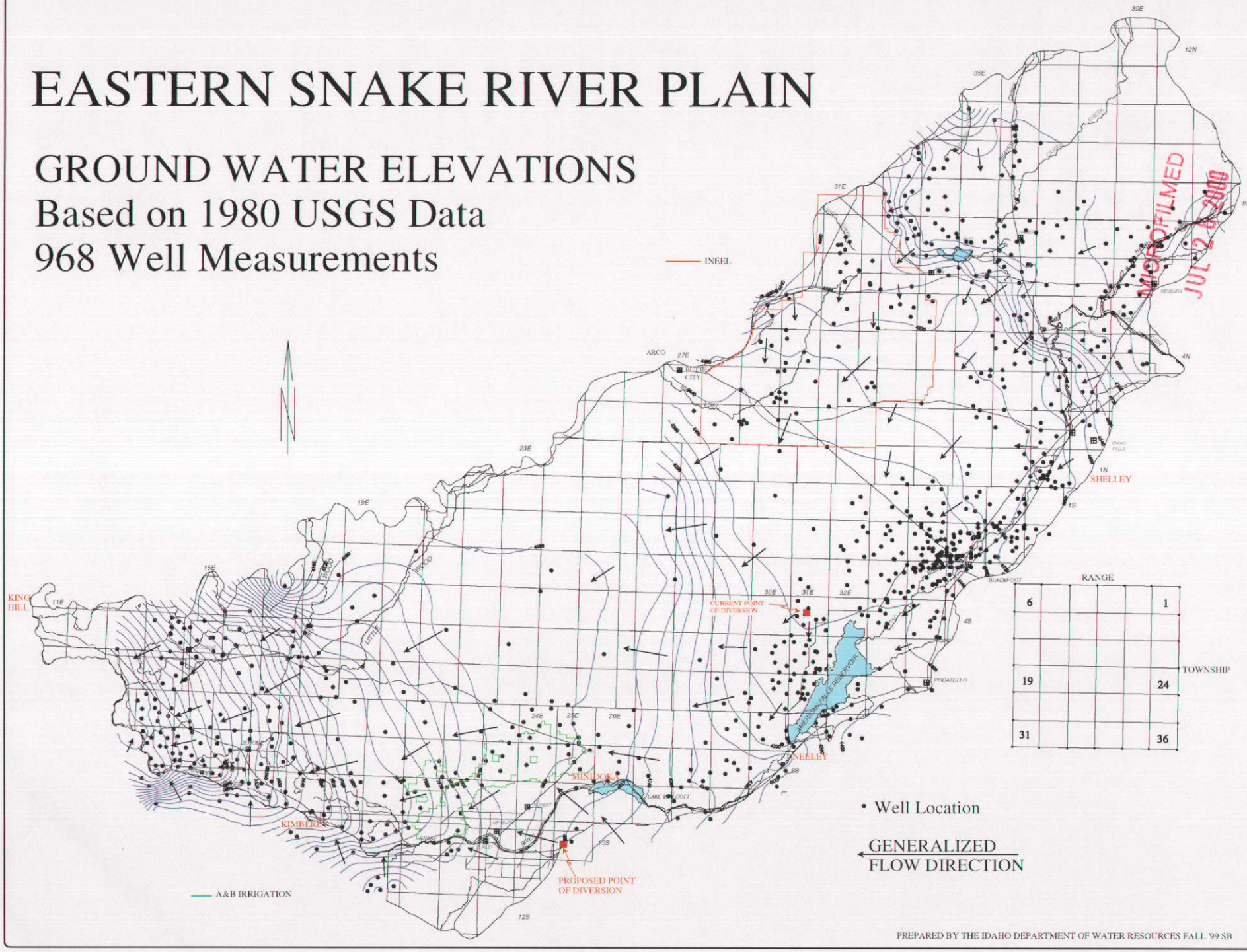


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45-07738

EASTERN SNAKE RIVER PLAIN

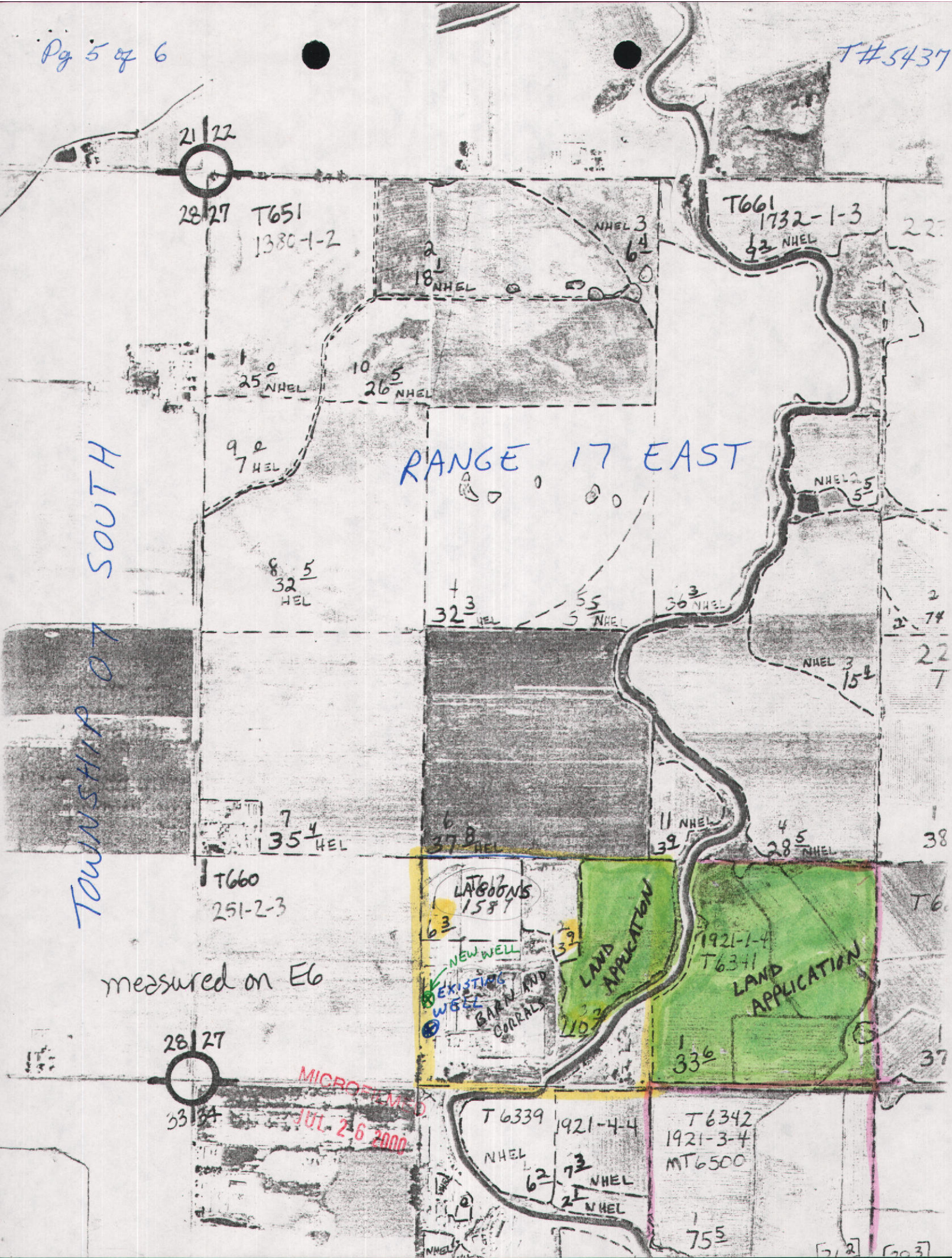
GROUND WATER ELEVATIONS
Based on 1980 USGS Data
968 Well Measurements



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JUL 2 8 2000

ATTACHMENT #1

T#5437


21 22
28 27
T651
1380-1-2
T661
1732-1-3
NHEL 3 6 1/2
2 18 1 NHEL
1 25 0 NHEL
10 26 5 NHEL
9 7 0 HEL
RANGE 17 EAST
TOWNSHIP 01 SOUTH
6 32 5 HEL
1 32 3 NHEL
5 5 5 NHEL
36 3 NHEL
NHEL 3 15 1
NHEL 2 5 5
7 35 4 HEL
T660
251-2-3
6 37 8 HEL
11 NHEL
39
4 28 5 NHEL
LAGOONS
1587
6 3
NEW WELL
EXISTING WELL
BARN AND CORRALS
LAND APPLICATION
1921-1-4
T6341
LAND APPLICATION
110 3
1 33 6
1 37
28 27
33 34
MICROFILMED
JUL 26 2000
T 6339
1921-4-4
NHEL
6 2
7 3 NHEL
2 1 NHEL
T6342
1921-3-4
MT6500
1 75 5
measured on E6

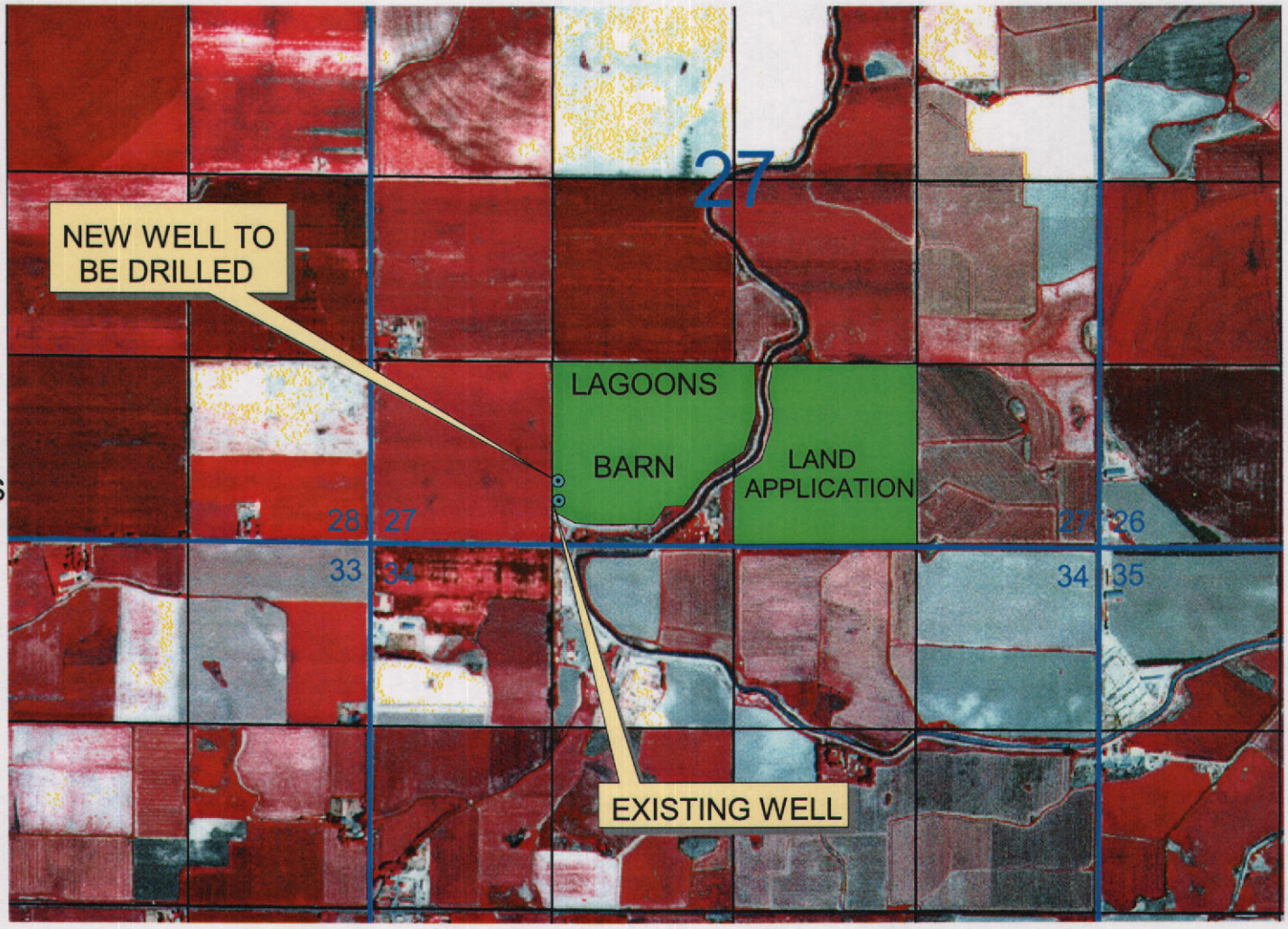
IDAHO DEPARTMENT OF WATER RESOURCES

TRANSFER # 5437

T35-08606F

POST TRANSFER CONDITIONS

RANGE 17 EAST



1320 0 1320 Feet

RESULTING PLACE OF USE
POINT OF DIVERSION
QUARTER/QUARTER LINES
SECTION LINES

MICROFILMED
JUL 26 2000

N
W E
S

PLACE OF USE PRESENTATION
1987/1988 NAPP PHOTOGRAPHY
DATA ENTRY BY COREY SKINNER

T #5437

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR TRANSFER NO. 5436 IN THE NAME OF JEROME CHEESE COMPANY	)))))	**AMENDED PRELIMINARY ORDER**

On October 12, 1999, the hearing officer for the Idaho Department of Water Resources ("Department") issued a Preliminary Order in connection with the above captioned matter. On October 26, 1999, Jerome Cheese Company filed a Petition for Reconsideration ("petition") with the Department which was granted on October 28, 1999. The protestants did not file any timely response with the Department.

The hearing officer has reviewed the petition in detail and responds to it as follows:

Paragraphs 1 through 6 - Consists of statements to which no response is necessary.

Paragraph 7

Assertion: Contrary to the Preliminary Order, Dr. Brockway did not state that "most" of the ground water from the original point of diversion is tributary to the Snake above Neeley or Minidoka. Nor did he state that only a "small" amount of water from the Hincks diversion point would reach the Jerome area and/or Thousand Springs.

Response: It is true that the applicant's consultant did not use the word "most" when describing the amount of unpumped water at the Hincks well which would reach the Snake River and did not use the word "small" when describing the amount of ground water which would reach the Jerome area. The consultant, however, on four different occasions either stated or acknowledged as correct that the "majority" of water not pumped at the Hincks well is tributary to springs which enter the Snake River in the Blackfoot to Neeley reach or below Neeley. He also stated that "some" of the unpumped water will go west in the aquifer and also used the word "significant" when describing the amount of water flowing west. See the discussion of "significant" in the response to paragraph 9 below.

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Finding of Fact 10 has been changed in this Amended Preliminary Order to show the language specifically used by the consultant.

Paragraph 8 Consists of a statement to which no response is necessary.

Paragraph 9

Assertion: At the hearing, Dr. Brockway stated that he was unable, at that time, to quantify how much of the ground water would reach the Snake above Milner versus how much flowed toward Jerome and Thousand Springs. Although Dr. Brockway was unable to place any precise number on the diversion, he did indicate that a substantial quantity (as related to a "small" amount) of the ground water flowed toward the Jerome area.

Response: The applicant's expert witness did not state that a "substantial" quantity of ground water would flow toward the Jerome area. He said a "significant" quantity of ground water would flow toward Jerome. He then said "statistically speaking, significant generally means you are 95% sure that something is going to happen and is big enough to be significant." He also described "significant" as being "large enough to be sure that it occurred and that you can ascribe a benefit to it." The expert did not define "significant" in terms of its more common meaning of "a lot" or "much." The expert could not quantify how much water in terms of percentage, rate or volume which would flow toward the Jerome area.

The assertion does not require or justify changes to the order.

Paragraph 10

Assertion: Dr. Brockway's testimony, as summarized above, is not consistent with the statement in the Preliminary Order that "most" of the water will fall into the Snake above Jerome, and that only a "small" amount will reach wells in the Jerome area.

Response: See responses to Paragraphs 7 and 9 above.

Paragraph 11

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Assertion: Dr. Brockway also testified to the projected "water budget" for the proposed new use of the Hincks right. The water budget took into account water conservation practices at the plant (which reduced the need for input water) and the addition of new water inputs to the system (so-called "cow water" extracted from milk, as well as "moisture in product"). Dr. Brockway concluded that, owing to these new inputs, the system-wide operation is not only non-consumptive, but that it actually adds water to the hydrologic system.

Response: The application for transfer does not create more water. Cow water is water attributable to different water rights than the right sought for transfer and is already available to the applicant and is being used by the applicant. The applicant's expert did not know how much unpumped ground water at the Hincks well site would reach the Jerome area. Hence estimates of water being "added" to the hydraulic system as a result of the transfer are not supportable.

The assertion does not require or justify changes to the order.

Paragraph 12

Assertion: Dr. Brockway testified that, taking into account (1) the water budget and (2) the "substantial" amount of water which would reach Jerome from the Hincks point of diversion, it is reasonable to conclude that Jerome area would experience a net improvement in water availability as a result of the transfer.

Response: See response to paragraphs 7, 9 and 11 above.

The assertion does not require or justify changes to the order.

Paragraph 13

Assertion: Although Dr. Brockway was careful to avoid offering a legal conclusion, it follows that a net improvement in the availability of water to the area means that the transfer will not result in injury to other users in the vicinity of Jerome.

Response: The Department denied the application, since it is not in the local public interest to approve the transfer and allow a use

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of water which would otherwise be prevented by the existing moratorium in the Snake Plain Aquifer area.

The assertion does not require or justify changes to the order.

Paragraph 14, 15 and 16 Responses are not appropriate, since the paragraphs are repetitive of other assertions above.

Paragraph 17

Assertion: The Preliminary Order failed to address or take into account the water budget analysis offered by Dr. Brockway.

Response: The assertion is incorrect, since the water budget analysis was received as an exhibit and was considered in the Preliminary Order. The analysis improperly includes "external" water associated with other water rights which are not a proper part of the analysis to determine enlargement. Public interest, however, not enlargement, was the basis of denial of the application. Also see the response to paragraph 13 above.

The assertion does not require or justify changes to the order.

Response to Relief Requested:

The Department should not make any changes to the Preliminary Order other than to Finding of Fact 10 as described above.

Response to Timing Requested:

The Department should not suspend action on the application for up to two years, as suggested by the applicant, to allow time to gather more information. The Department scheduled and held the hearing as requested and urged by the applicant. Failure of the applicant to provide information which it could have presented at the hearing is not reason to delay a decision in the matter or to rehear the matter at some later date.

Based upon his understanding of the law and the facts in this matter, the hearing officer enters the following Findings of Fact, Conclusions of Law and Amended Preliminary Order:

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FINDINGS OF FACT

1. On May 10, 1995, the Department issued License No. 35-08606 in the name of Roy E. Hincks as follows:

Source:	Groundwater
Priority:	July 1, 1985
Rate of diversion:	6.07 cubic feet per second ("cfs")
Volume:	1214 acre feet per year ("afy")
Point of diversion:	NE1/4NW1/4, Section 16, T4S, R31E, B.M. ("Hincks" well)
Use:	Irrigation
Season of use:	April 1 to October 31
Place of use:	303.5 acres within parts of Section 16, T4S, R31E, B.M.

(Note: The "1/4" designations will be omitted from subsequent legal descriptions in this order).

2. On March 3, 1999, Roy Hincks ("Hincks") and Davisco Foods, Inc. ("Davisco") entered into a Memorandum of Agreement in which Hincks agreed to sell 160 miner's inches (3.2 cfs) of water from License No. 36-08606 to Davisco.

3. On March 8, 1999, Jerome Cheese Company ("applicant") filed Application for Transfer No. 5436 ("application") with the Department seeking to change the point of diversion, place of use, season of use and nature of use of a portion of License No. 35-08606. The applicant proposes to cease the diversion of 3.2 cfs and 480 afy of ground water from the Hincks well and to divert the water from two new wells to be drilled in the NWNE Section 25, T8S, R16E, B.M. near Jerome, Idaho. The applicant also proposes to cease the irrigation of 160 acres in Section 16, T4S, R31E, B.M. and to change the season and nature of use to year-round commercial use in an existing cheese plant ("plant") in Section 25, T8S, R16E, B.M. near Jerome. The commercial use will consist of washing cheese processing equipment and washing cheese during production.

4. The Department published notice of the Application which was subsequently protested by Bill Chisholm, Lee Halper, Darcy Thornborrow and Michael Ihler ("protestants").

5. Issues identified by the protestants are as follows:

a. The proposed changes will injure other water rights.

b. The proposed changes will constitute an enlargement in use of the original right.

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c. The proposed changes are not in the local public interest.

d. The proposed changes are not consistent with the conservation of water resources within the state of Idaho.

6. On July 27 and 28, 1999, the Department conducted a hearing in the matter in Twin Falls, Idaho. The applicant was present and was represented by Christopher Meyer and Mike Creamer. Protestants Bill Chisholm, Lee Halper and Michael Ihler were present and represented themselves. Darcy Thornborrow was represented by Pat Brown. The hearing officer allowed the city of Jerome ("city") to participate as a public witness as provided in IDAPA 37.01.01355 (Procedure Rule 355). The city did not appear as a public witness at the hearing, but on August 13, 1999, submitted written comments for consideration. On August 31, 1999, the applicant responded to the public witness comments of the city.

7. Exhibits premarked, offered or accepted as a part of the record are as follows:

a. Applicant's Exhibit 1 - Schematic generally showing water flow through cheese plant

b. Applicant's Exhibit 2 - Schematic titled Jerome Cheese Economic Factors in Magic Valley

c. Applicant's Exhibit 3 - Bar chart titled Jerome Cheese Company Water Conservation Measures

d. Applicant's Exhibit 4 - Snake Plain Aquifer

e. Applicant's Exhibit 5 - Jerome Cheese Water Right Transfers Annual Water Budget Comparisons

f. Applicant's Exhibit 6 - Jerome Cheese Co. Water Use Schematic

g. Applicant's Exhibit 7 - NOT OFFERED

h. Applicant's Exhibit 8 - NOT OFFERED

i. Applicant's Exhibit 9 - Well Interference Analysis Proposed Jerome Cheese Well(s) Q = 0.66 cfs

j. Applicant's Exhibit 10 - Well Interference Analysis Proposed Jerome Cheese Well(s) Q= 3.2 cfs

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k. Applicant's Exhibit 11 - Well Interference Analysis Proposed Jerome Cheese Well(s) Q = 3.86 cfs (Sandy and Hincks Transfers)

l. Applicant's Exhibit 12 - NOT OFFERED

m. Applicant's Exhibit 13 - Summary of Jerome Cheese Water Transfers

n. Applicant's Exhibit 14 - Blue line print - Site Plan for Jerome Cheese

o. Applicant's Exhibit 15 - Blue line print - Wellhouse Water Supply Plan and Elevations for Jerome Cheese

p. Applicant's Exhibit 16 - Second Addendum to Agreement for Sale of Water Right

q. Applicant's Exhibit 17 - First Addendum to Agreement for Sale of Water Right

r. Applicant's Exhibit 18 - GIS shape file

s. Applicant's Exhibit 19 - GIS shape file - Sandy Property

t. Protestant's Exhibit A - Letter dated July 20, 1999 to Robert E. Williams from Gary G. Allen together with a draft Complaint for Declaratory Relief

8. The applicant presently receives ground water from the city for the plant. The applicant wants to obtain its own water supply due to concerns about water quality (sediment), water pressure and the cost of water provided by the city. Water available from the city may be used as a backup source of supply. The water sought for transfer under this application is in addition to that sought under Application for Transfer No. 5401 which also was submitted in the name of Jerome Cheese Company.

9. The proposed new wells are located down gradient of the licensed well a distance of approximately 90 miles. The well design for one well proposes a 12" diameter bore to a total depth of about 400 feet. The proposed surface seal is a 20" diameter initial bore to a depth of 80 feet with a 16" diameter casing to be installed in the 20" hole. The design discharge is 1,000 gallons per minute. The design has been reviewed and approved by the Division of Environmental Quality, Idaho Department of Health and Welfare. The second well has not been designed yet.

10. The applicant's expert testified that the "majority" of water not pumped at the Hincks well is tributary to springs which enter the Snake River in the Blackfoot to Neeley reach or below Neeley. He also stated that "some" of the unpumped water will

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go west in the aquifer and that ground water reaching the Snake River would not again be available as ground water in the Snake Plain Aquifer.

11. The protestants allege that dairies are not in the local public interest, and that since the cheese plant uses milk originating from dairies, the cheese plant is not in the local public interest. The protestants also allege that nitrates from dairy waste contaminate groundwater.

12. In its public witness comments, the city alleges that the application is not in the public interest, since the applicant might cease using water provided by the city and might cease using the wastewater treatment system of the city, thus depriving the city of user fees. The city also alleges there will be an expansion in use of water by the applicant, if the applicant uses its own well and still uses water provided by the city in the cheese plant or uses city water as a backup source of water for the cheese plant.

13. On May 15, 1992, the Director issued a moratorium order curtailing the use of surface and ground water within the Snake River Basin upstream from the USGS gauge on the Snake River near Weiser, Idaho ("Snake Plain Aquifer"). The moratorium was issued to prevent further development of water resources in the Snake Plain Aquifer to ensure compliance with provisions of chapter 2, title 42, Idaho Code. The Director subsequently amended the moratorium order on January 6, 1993 and April 30, 1993.

CONCLUSIONS OF LAW

1. Section 42-222, Idaho Code, provides in pertinent part as follows:

> 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, and 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 42-203A(5), Idaho Code; ....

2. Section 42-1805(7), Idaho Code, and IDAPA 37.03.08055 (Water Appropriation Rule 55) provide for the establishment of a moratorium preventing further development of a water resource in a designated area to ensure compliance with provisions of chapter 2, title 42, Idaho Code.

3. The applicant carries the burden of coming forward with evidence that the proposed change will not injure other water right holders, that it will not constitute an enlargement of the use and will be consistent with principles of conservation of the

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JUL 26 2000

water of the state of Idaho.

4. Both the applicant and the protestants have the responsibility of coming forward with evidence regarding matters of public interest of which they are each most cognizant.

5. The applicant has the ultimate burden of persuasion for all of the criteria of Section 42-222, Idaho Code.

6. The moratorium designated by the Department on May 15, 1992 for the Snake Plain Aquifer was issued to prevent further development of water sources on the plain in order to protect prior water rights and to ensure compliance with provisions of chapter 2, title 42, Idaho Code.

7. The proposed point of diversion by the applicant for the cheese plant is within the Snake Plain Aquifer area. Since only a small unquantified portion of ground water which would not be pumped at the Hincks well would reach the proposed new well(s) located about 90 miles to the southwest, the diversion of 3.2 cfs or the majority thereof at the proposed new well(s) would have the same physical effect as a new appropriation of ground water and would cause injury because it would have a senior priority over validly established water rights held by junior appropriators.

8. It is not in the local public interest to approve a transfer that would essentially be a new appropriation of water which would otherwise be prevented by the moratorium.

9. The Department should deny the application.

ORDER

IT IS THEREFORE, hereby ORDERED that Application for Transfer No. 5436 in the name of Jerome Cheese Company is **DENIED**.

Signed this 12th day of November, 1999.

L. Glen Saxton

L. GLEN SAXTON
Hearing Officer

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JUL 26 2000

CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that on this 20th day of November, 1999, the above and foregoing document was served upon the following by placing a copy of the same in the United States Mail, postage prepaid and properly addressed to the following:

CHRISTOPHER H MEYER
MICHAEL C CREAMER
GIVENS PURSLEY LLP
277 N 6TH ST STE 200
PO BOX 2720
BOISE ID 83701-2720

LEE HALPER
331 S 230 W
JEROME ID 83338

BILL CHISHOLM
19073 E HWY 30
BUHL ID 83316

MICHAEL IHLER
2635A E 3100 N
TWIN FALLS ID 83301

DARCY THORNBORROW
1676 E 3800 N
BUHL ID 83616

Julie L. Yarbrough

JULIE L. YARBROUGH, Administrative Assistant
Water Allocation Bureau

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JUL 26 2000

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF TRANSFER NO. 5436 IN THE NAME OF JEROME CHEESE COMPANY	)	**ORDER GRANTING PETITION FOR RECONSIDERATION**

On October 12, 1999, the Department of Water Resources ("the department") issued Transfer No. 5436 in the name of Jerome Cheese Company ("applicant") as a Preliminary Order.

On October 26, 1999, the applicant filed a Petition for Reconsideration ("petition") with the hearing officer in connection with the Preliminary Order.

ORDER

The department has reviewed the petition and HEREBY ORDERS that the petition is **GRANTED** under the following terms:

1. Granting of the petition does not represent department agreement with any provision of the petition.

2. The department retains jurisdiction of the matter to allow time for the department to review and consider the petition.

Dated this 28th day of October, 1999.

L. GLEN SAXTON
Hearing Officer

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JUL 26 2000

CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that on this 19th day of October, 1999, the above and foregoing document was served upon the following by placing a copy of the same in the United States Mail, postage prepaid and properly addressed to the following:

CHRISTOPHER H MEYER
MICHAEL C CREAMER
GIVENS PURSLEY LLP
277 N 6TH ST STE 200
PO BOX 2720
BOISE ID 83701-2720

LEE HALPER
331 S 230 W
JEROME ID 83338

BILL CHISHOLM
19073 E HWY 30
BUHL ID 83316

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2635A E 3100 N
TWIN FALLS ID 83301

DARCY THORNBORROW
1676 E 3800 N
BUHL ID 83616

Julie L. Yarbrough

JULIE L. YARBROUGH, Administrative Assistant
Water Allocation Bureau

MICROFILMED
JUL 26 2000

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR TRANSFER NO. 5436 IN THE NAME OF JEROME CHEESE COMPANY	)))))	**PRELIMINARY ORDER**

This matter having come before the Idaho Department of Water Resources (the "Department") in the form of a protested application for transfer and the Department having held a conference and a hearing in the matter, the hearing officer enters the following Findings of Fact, Conclusions of Law and Preliminary Order:

FINDINGS OF FACT

1. On May 10, 1995, the Department issued License No. 35-08606 in the name of Roy E. Hincks as follows:

Source:	Groundwater
Priority:	July 1, 1985
Rate of diversion:	6.07 cubic feet per second ("cfs")
Volume:	1214 acre feet per year ("afy")
Point of diversion:	NE1/4NW1/4, Section 16, T4S, R31E, B.M. ("Hincks" well)
Use:	Irrigation
Season of use:	April 1 to October 31
Place of use:	303.5 acres within parts of Section 16, T4S, R31E, B.M.

(Note: The "1/4" designations will be omitted from subsequent legal descriptions in this order).

2. On March 3, 1999, Roy Hincks ("Hincks") and Davisco Foods, Inc. ("Davisco") entered into a Memorandum of Agreement in which Hincks agreed to sell 160 miner's inches (3.2 cfs) of water from License No. 36-08606 to Davisco.

3. On March 8, 1999, Jerome Cheese Company ("applicant") filed Application for Transfer No. 5436 ("application") with the Department seeking to change the point of diversion, place of use, season of use and nature of use of a portion of License No. 35-08606. The applicant proposes to cease the diversion of 3.2 cfs and 480 afy of ground water from the Hincks well and to divert the water from two new wells

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c. Applicant's Exhibit 3 - Bar chart titled Jerome Cheese Company Water Conservation Measures

d. Applicant's Exhibit 4 - Snake Plain Aquifer

e. Applicant's Exhibit 5 - Jerome Cheese Water Right Transfers Annual Water Budget Comparisons

f. Applicant's Exhibit 6 - Jerome Cheese Co. Water Use Schematic

g. Applicant's Exhibit 7 - NOT OFFERED

h. Applicant's Exhibit 8 - NOT OFFERED

i. Applicant's Exhibit 9 - Well Interference Analysis Proposed Jerome Cheese Well(s) Q = 0.66 cfs

j. Applicant's Exhibit 10 - Well Interference Analysis Proposed Jerome Cheese Well(s) Q= 3.2 cfs

k. Applicant's Exhibit 11 - Well Interference Analysis Proposed Jerome Cheese Well(s) Q = 3.86 cfs (Sandy and Hincks Transfers)

l. Applicant's Exhibit 12 - NOT OFFERED

m. Applicant's Exhibit 13 - Summary of Jerome Cheese Water Transfers

n. Applicant's Exhibit 14 - Blue line print - Site Plan for Jerome Cheese

o. Applicant's Exhibit 15 - Blue line print - Wellhouse Water Supply Plan and Elevations for Jerome Cheese

p. Applicant's Exhibit 16 - Second Addendum to Agreement for Sale of Water Right

q. Applicant's Exhibit 17 - First Addendum to Agreement for Sale of Water Right

r. Applicant's Exhibit 18 - GIS shape file

s. Applicant's Exhibit 19 - GIS shape file - Sandy Property

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JUL 26 2000

to be drilled in the NWNE Section 25, T8S, R16E, B.M. near Jerome, Idaho. The applicant also proposes to cease the irrigation of 160 acres in Section 16, T4S, R31E, B.M. and to change the season and nature of use to year-round commercial use in an existing cheese plant ("plant") in Section 25, T8S, R16E, B.M. near Jerome. The commercial use will consist of washing cheese processing equipment and washing cheese during production.

4. The Department published notice of the Application which was subsequently protested by Bill Chisholm, Lee Halper, Darcy Thornborrow and Michael Ihler ("protestants").

5. Issues identified by the protestants are as follows:

a. The proposed changes will injure other water rights.

b. The proposed changes will constitute an enlargement in use of the original right.

c. The proposed changes are not in the local public interest.

d. The proposed changes are not consistent with the conservation of water resources within the state of Idaho.

6. On July 27 and 28, 1999, the Department conducted a hearing in the matter in Twin Falls, Idaho. The applicant was present and was represented by Christopher Meyer and Mike Creamer. Protestants Bill Chisholm, Lee Halper and Michael Ihler were present and represented themselves. Darcy Thornborrow was represented by Pat Brown. The hearing officer allowed the city of Jerome ("city") to participate as a public witness as provided in IDAPA 37.01.01355 (Procedure Rule 355). The city did not appear as a public witness at the hearing, but on August 13, 1999, submitted written comments for consideration. On August 31, 1999, the applicant responded to the public witness comments of the city.

7. Exhibits premarked, offered or accepted as a part of the record are as follows:

a. Applicant's Exhibit 1 - Schematic generally showing water flow through cheese plant

b. Applicant's Exhibit 2 - Schematic titled Jerome Cheese Economic Factors in Magic Valley

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JUL 2 6 2000

t. Protestant's Exhibit A - Letter dated July 20, 1999 to Robert E. Williams from Gary G. Allen together with a draft Complaint for Declaratory Relief

8. The applicant presently receives ground water from the city for the plant. The applicant wants to obtain its own water supply due to concerns about water quality (sediment), water pressure and the cost of water provided by the city. Water available from the city may be used as a backup source of supply. The water sought for transfer under this application is in addition to that sought under Application for Transfer No. 5401 which also was submitted in the name of Jerome Cheese Company.

9. The proposed new wells are located down gradient of the licensed well a distance of approximately 90 miles. The well design for one well proposes a 12" diameter bore to a total depth of about 400 feet. The proposed surface seal is a 20" diameter initial bore to a depth of 80 feet with a 16" diameter casing to be installed in the 20" hole. The design discharge is 1,000 gallons per minute. The design has been reviewed and approved by the Division of Environmental Quality, Idaho Department of Health and Welfare. The second well has not been designed yet.

10. The applicant's expert testified that if ground water is not pumped at the Hincks well, most of the unpumped ground water is tributary to the Snake River upstream of either Neeley or Minidoka and would not again be available as ground water in the Snake Plain Aquifer. Only a small, unquantified portion of the ground water not diverted at the Hincks well would reach the Jerome area as ground water.

11. The protestants allege that dairies are not in the local public interest, and that since the cheese plant uses milk originating from dairies, the cheese plant is not in the local public interest. The protestants also allege that nitrates from dairy waste contaminate groundwater.

12. In its public witness comments, the city alleges that the application is not in the public interest, since the applicant might cease using water provided by the city and might cease using the wastewater treatment system of the city, thus depriving the city of user fees. The city also alleges there will be an expansion in use of water by the applicant, if the applicant uses its own well and still uses water provided by the city in the cheese plant or uses city water as a backup source of water for the cheese plant.

13. On May 15, 1992, the Director issued a moratorium order curtailing the use of surface and ground water within the Snake River Basin upstream from the USGS gauge on the Snake River near Weiser, Idaho ("Snake Plain Aquifer"). The moratorium was issued to prevent further development of water resources in the Snake Plain Aquifer to ensure compliance with provisions of chapter 2, title 42, Idaho Code. The Director subsequently amended the moratorium order on January 6, 1993 and April 30, 1993.

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CONCLUSIONS OF LAW

1. Section 42-222, Idaho Code, provides in pertinent part as follows:

> 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, and 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 42-203A(5), Idaho Code; ....

2. Section 42-1805(7), Idaho Code, and IDAPA 37.03.08055 (Water Appropriation Rule 55) provide for the establishment of a moratorium preventing further development of a water resource in a designated area to ensure compliance with provisions of chapter 2, title 42, Idaho Code.

3. The applicant carries the burden of coming forward with evidence that the proposed change will not injure other water right holders, that it will not constitute an enlargement of the use and will be consistent with principles of conservation of the water of the state of Idaho.

4. Both the applicant and the protestants have the responsibility of coming forward with evidence regarding matters of public interest of which they are each most cognizant.

5. The applicant has the ultimate burden of persuasion for all of the criteria of Section 42-222, Idaho Code.

6. The moratorium designated by the Department on May 15, 1992 for the Snake Plain Aquifer was issued to prevent further development of water sources on the plain in order to protect prior water rights and to ensure compliance with provisions of chapter 2, title 42, Idaho Code.

7. The proposed point of diversion by the applicant for the cheese plant is within the Snake Plain Aquifer area. Since only a small unquantified portion of ground water which would not be pumped at the Hincks well would reach the proposed new well(s) located about 90 miles to the southwest, the diversion of 3.2 cfs or the majority thereof at the proposed new well(s) would have the same physical effect as a new appropriation of ground water and would cause injury because it would have a senior priority over validly established water rights held by junior appropriators.

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JUL 26 2000

8. It is not in the local public interest to approve a transfer that would essentially be a new appropriation of water which would otherwise be prevented by the moratorium.

9. The Department should deny the application.

ORDER

IT IS THEREFORE, hereby ORDERED that Application for Transfer No. 5436 in the name of Jerome Cheese Company is **DENIED**.

Signed this 12th day of October, 1999.

L. GLEN SAXTON
Hearing Officer

MICROFILMED
JUL 26 2000

CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that on this 12th day of October, 1999, the above and foregoing document was served upon the following by placing a copy of the same in the United States Mail, postage prepaid and properly addressed to the following:

CHRISTOPHER H MEYER
MICHAEL C CREAMER
GIVENS PURSLEY LLP
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JEROME ID 83338

BILL CHISHOLM
19073 E HWY 30
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MICHAEL IHLER
2635A E 3100 N
TWIN FALLS ID 83301

DARCY THORNBORROW
1676 E 3800 N
BUHL ID 83616

Julie L. Yarbrough

JULIE L. YARBROUGH, Administrative Assistant
Water Allocation Bureau

MICROFILMED
JUN 26 2000

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR TRANSFER NO. 5436 IN THE NAME OF JEROME CHEESE COMPANY	)	**ORDER AUTHORIZING DISCOVERY**

On June 9, 1999, Jerome Cheese Company ("applicant") filed Applicant's Motion to Dispense with Prehearing Conference and to Open Discovery in Transfer No. 5436.

The department hereby authorizes the parties to engage in discovery in connection with Application for Transfer No. 5436 commencing with the date of this order. The parties shall complete discovery seven (7) days prior to the date of the hearing which is scheduled to begin on July 27, 1999. Discovery shall be conducted pursuant to IDAPA Rules 37.01.01520-532 (Rules of Procedure 520 through 532).

Discovery shall be limited as follows:

1. Injury inquiries must be related to a water right(s), but not necessarily to a water right(s) owned or used by the protestants.

2. Local public interest inquiries must be limited to use of water for "the proposed use" which in this case is by a cheese factory. Dairies and their operation are not proper subject matter in Application for Transfer No. 5436.

The parties are directed to answer or otherwise respond to discovery in accordance with the department's Rules of Procedure and the Idaho Rules of Civil Procedure, as appropriate. The deadline for serving new written discovery for both Transfer Nos. 5401 and 5436 is July 1, 1999. Responses to discovery shall be mailed no later than July 19, 1999.

The applicant's motion to dispense with a prehearing conference in connection with Transfer No. 5436, other than any conference conducted by the hearing officer on the date of the hearing, is **GRANTED**.

In accordance with Rule 520, the scope of discovery shall be governed by Rule 26(b) of the Idaho Rules of Civil Procedure, unless otherwise provided by statute, rule or order of the Director.

Dated this 14th day of June, 1999.

L. Glen Saxton

L. GLEN SAXTON
Hearing Officer

MICROFILMED
JUL 25 2000

CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that on this 14th day of June, 1999, the above and foregoing document was served upon the following by placing a copy of the same in the United States Mail, postage prepaid and properly addressed to the following:

VIA U.S. MAIL & FACSIMILE

CHRISTOPHER H MEYER
MICHAEL C CREAMER
GIVENS PURSLEY LLP
277 N 6TH ST STE 200
PO BOX 2720
BOISE ID 83701-2720

LEE HALPER
331 S 230 W
JEROME ID 83338

VIA U.S. MAIL

BILL CHISHOLM
19073 E HWY 30
BUHL ID 83316

MICHAEL IHLER
2635A E 3100 N
TWIN FALLS ID 83301

DARCY THORNBORROW
1676 E 3800 N
BUHL ID 83616

Julie L. Yarbrough

JULIE L. YARBROUGH, Administrative Assistant
Water Allocation Bureau

MICROFILMED
JUN 26 2000

State of Idaho
Department of Water Resources

WATER RIGHT LICENSE

WATER RIGHT NO. 35-08606

Priority: July 1, 1985

Maximum Diversion Rate: 6.07 CFS
Maximum Diversion Volume: 1214.0 AF

This is to certify, that ROY E HINCKS
2851 W 900 S
STERLING ID 83279 has complied with the terms and conditions of the permit, issued pursuant to Application for Permit dated July 1, 1985; and has submitted Proof of Beneficial Use on January 17, 1992. An examination indicates that the works have a diversion capacity of 6.280 cfs of water from a **GROUNDWATER** source, and a water right has been established as follows:

BENEFICIAL USE	PERIOD OF USE	RATE OF DIVERSION	ANNUAL VOLUME
IRRIGATION	04/01 to 10/31	6.07 CFS	1214.0 AF

LOCATION OF POINT(S) OF DIVERSION: NENW , Sec. 16, Township 04S, Range 31E
BINGHAM County

PLACE OF USE: IRRIGATION

TWN	RGE	SEC		ACRES		ACRES		ACRES	TOTAL
04S	31E	16	NENE	37	NWNE	40	SWNE	40	
			SENE	36	NENW	40	NWNW	34.2	
			SWNW	36.3	SENW	40			303.5

Total number of acres irrigated: 303.5

CONDITIONS/REMARKS:

1. The maximum diversion volume is defined as the maximum allowable volume of water that may be diverted annually from the source under this right. The use of water confirmed by this right is limited to the amount that can actually be beneficially used. The maximum diversion volume may be adjusted to more accurately describe the beneficial use or to implement accepted standards of diversion and use efficiency.
2. This water right is appurtenant to the described place of use.
3. This right is subject to all prior water rights and may be forfeited by five years of non-use.
4. Modifications to or variance from this license must be made within the limits of Section 42-222, Idaho Code, or the applicable Idano law.
5. This right is for the use of trust water and is subject to review 20 years after the issuance of the permit to determine availability of water and to re-evaluate the public interest.
6. Diversion and use of water under this right is subject to an annual use fee if rules are subsequently promulgated which provide for the submittal of the fee.
7. The Director retains jurisdiction of the right issued to change, add or remove any requirement as determined to be appropriate.

MAY 27 1995

State of Idaho
Department of Water Resources

WATER RIGHT LICENSE

WATER RIGHT NO. 35-08606

CONDITIONS/REMARKS:

8. This right when combined with all other rights shall provide no more than .02 cfs per acre nor more than 4.0 afa per acre for the lands above.

This license is issued pursuant to the provisions of Section 42-219, Idaho Code. Witness the seal and signature of the Director, affixed at Boise, this 10th day of MAY, 1995.

Acting for R. Keith Higginson, Director

APPROVED

State of Idaho
Department of Water Resources

RECEIVED
APR 18 1995
Department of Water Resources

APPLICATION FOR AMENDMENT
(For Licensing Purposes)
WATER RIGHT NO. 35-08606

Date of Priority: July 1, 1985

Maximum Diversion Rate: 6.07 CFS
Maximum Diversion Volume: 1214.0 AF

Comes now ROY E HINCKS
2851 W 900 S
STERLING ID 83279 and represents to the Director of the

Idaho Department of Water Resources:

That he is the owner and holder of Permit to Appropriate the Public Waters of the State of Idaho No. 35-08606, and requests that the permit be changed as follows:

Source: **GROUNDWATER**

BENEFICIAL USE	PERIOD OF USE	RATE OF DIVERSION	ANNUAL VOLUME
IRRIGATION	04/01 to 10/31	6.07 CFS	1214.0 AF

LOCATION OF POINT(S) OF DIVERSION: NENW , Sec. 16, Township 04S, Range 31E
BINGHAM County

PLACE OF USE: IRRIGATION

TWN	RGE	SEC		ACRES		ACRES		ACRES	TOTAL
04S	31E	16	NENE	37	NWNE	40	SWNE	40	
			SENE	36	NENW	40	NWNW	34.2	
			SWNW	36.3	SENW	40			303.5

Total number of acres irrigated: 303.5

MAY 17 1995

Permit holder asserts that no one will be injured by such change and that such change will be made at permit holder's own risk.

Signed at Twin Falls, ID, this 12 day of April, 1995.

Roy E Hincks
(Signature)

State of Idaho
Department of Water Resources

APPLICATION FOR AMENDMENT
(For Licensing Purposes)
WATER RIGHT NO. 35-08606

****

FOR DEPARTMENT USE ONLY

Preliminary check by AR Fee = 50.00 Receipted by JW # CO 32600 Date 5/5/95

ACTION OF THE DEPARTMENT OF WATER RESOURCES

I, R. Keith Higginson, of the Department of Water Resources hereby approve the above Application for Amendment for Permit No. 35-08606 with the following;

CONDITIONS/REMARKS:

1. The maximum diversion volume is defined as the maximum allowable volume of water that may be diverted annually from the source under this right. The use of water confirmed by this right is limited to the amount that can actually be beneficially used. The maximum diversion volume may be adjusted to more accurately describe the beneficial use or to implement accepted standards of diversion and use efficiency.
2. This water right is appurtenant to the described place of use.
3. This right is subject to all prior water rights and may be forfeited by five years of non-use.
4. Modifications to or variance from this license must be made within the limits of Section 42-222, Idaho Code, or the applicable Idaho law.
5. This right is for the use of trust water and is subject to review 20 years after the issuance of the permit to determine availability of water and to re-evaluate the public interest.
6. Diversion and use of water under this right is subject to an annual use fee if rules are subsequently promulgated which provide for the submittal of the fee.
7. The Director retains jurisdiction of the right issued to change, add or remove any requirement as determined to be appropriate.
8. This right when combined with all other rights shall provide no more than .02 cfs per acre nor more than 4.0 afa per acre for the lands above.

Witness my hand this 10TH day of MAY, 1995.

Acting for R. Keith Higginson, Director

MAY 17 1995

Form 217
1-97

RECEIVED
JAN 17 1992
Department of Water Resources
Eastern District Office

For Office Use Only
Amt of Fee $ 250 00
Date 1-17-92
Receipt No. 5016856
Received by KCW

STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES

PROOF OF BENEFICIAL USE

The Idaho Department of Water Resources will consider this form as a statement that the permit holder(s) has/have completed all development that will occur under this permit and that water has been applied according to the provisions of the permit for the beneficial use(s) described below. This form must be accompanied by a license examination fee or a completed field examination report prepared by a certified water right examiner who has been appointed by the department.

1 Permit No. 35- 8606 Telephone No. 328-2440

2 Name(s) of Permit Holder(s): Roy E Hincks

3 Post Office Address: 2851 W 900 S Sterling Id 83279

4 Source of Water: Groundwater

a If ground water, well driller's name: Unk Date drilled: 1960

b Pump horsepower: 250 Pressure (psi): 150 Dynamic pumping level (ft.): 110'

5 Extent of Use:

Domestic _____ (No. of households) Irrigation 320 (No. of acres)

Stockwater _____ (No. and type of stock) Other _____

6 Total rate and/or volume for which proof is submitted 6.4 cfs _____ acre/feet

7. Refer to the approval conditions on your permit and respond accordingly:

Measuring device: Required? __Yes __No Installed? __Yes __No

OR

Flow Measurement Port: Required? X Yes __No Installed? __Yes __No

8 Fee Enclosed: $ 250 00 (See License Examination Fee Schedule)

9. Person to contact to accompany the Department representative during the field examination:

Same as above
Name Telephone No.

Address

10 The above information is my true statement of the extent to which the above numbered permit has been developed and I relinquish any undeveloped portion of the permit to the state of Idaho.

17 Jan 92 Roy E Hincks
Date Signature (and title if on behalf of a company or organization)

Land is under CRP until 1998

RECEIPT CONFIRMED FEB 07 1992

State of Idaho
Department of Water Resources

Permit To Appropriate Water

NO. 35-08606

Proposed Priority: July 1, 1985 Maximum Diversion Rate: 6.40 CFS

This is to certify, that **ROY E. HINCKS**
2851 W. 900 S.
STERLING, ID 83279

has applied for a permit to appropriate water from: **GROUNDWATER**
and a permit is **APPROVED** for development of water as follows:

BENEFICIAL USE	PERIOD OF USE	RATE OF DIVERSION
IRRIGATION	04/01 to 11/01	6.40 CFS

LOCATION OF POINT(S) OF DIVERSION: SENW Sec. 16, Township 04S, Range 31E
BINGHAM County

PLACE OF USE: IRRIGATION

TWN	RGE	SEC		ACRES		ACRES		ACRES	TOTAL
04S	31E	16	NENE	40	NWNE	40	SWNE	40	
			SENE	40	NENW	40	NWNW	40	
			SWNW	40	SENW	40			320

Total number of acres irrigated: 320

CONDITIONS/REMARKS:

1. Proof of construction of works and application of water to beneficial use shall be submitted on or before **February 1, 1992.**
2. Subject to all prior water rights.
3. A flow measurement port or other device as specified by the Department shall be installed by the permit holder to provide for the installation of measuring equipment and the determination of the rate of diversion by the Department.
4. Permit holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code.
5. Any license issued by IDWR pursuant to the permit or portion thereof for the use of trust water is subject to a term review of 20 years after the date of this approval to determine availability of water for the use and to re-evaluate the public interest at the end of the term.
6. Diversion and use of water under this permit is subject to an annual use fee if rules are subsequently promulgated which provide for the submittal of the fee.
7. The Director retains jurisdiction of the permit and/or subsequent license issued to change, add or remove any requirement as determined to be appropriate.
8. The rate of diversion of water for irrigation under this permit and all other water rights on the same land shall not exceed 0.02 cubic feet per second for each acre of land.

State of Idaho
Department of Water Resources

Permit To Appropriate Water

NO. 35-08606

This permit is issued pursuant to the provisions of Section 42-204, Idaho Code. Witness the seal and signature of the Director, affixed at Boise, this

20th day of February, 1991.

R. Keith Higginson, Director

for

RECEIVED

MAR 18 1991

Form 202
3/78

Ident. No. 35 8606

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR PERMIT

To appropriate the public waters of the State of Idaho

1. Name of applicant ROY E. HINCKS Phone 328-2402

Post office address Route 1 Box 42, Sterling, ID 83279

2. Source of water supply groundwater which is a tributary of _____

3. Location of point of diversion is SE ¼ of NW ¼ of Section 16 Township 4S

Range 31E B.M. Bingham County, additional points of diversion if any: _____

4. Water will be used for the following purposes:

Amount 6.4cfs (cfs or acre-feet per annum) for Irrigation purposes from 4-1 to 11-1 (both dates inclusive)

Amount _____ (cfs or acre-feet per annum) for _____ purposes from _____ to _____ (both dates inclusive)

Amount _____ (cfs or acre-feet per annum) for _____ purposes from _____ to _____ (both dates inclusive)

Amount _____ (cfs or acre-feet per annum) for _____ purposes from _____ to _____ (both dates inclusive)

5. Total quantity to be appropriated:

a. 6.40 cfs cubic feet per second and/or b. _____ acre-feet per annum.

6. Proposed diverting works:

a. Description of ditches, flumes, pumps, headgates, etc. Well, pump and sprinkler system

b. Height of storage dam _____ feet, active reservoir capacity _____ acre-feet; total reservoir capacity _____ acre-feet, materials used in storage dam: _____

Period of year when water will be diverted to storage _____ (Month/Day) to _____ (Month/Day) inclusive.

c. Proposed well diameter is _____ inches; proposed depth of well is _____ feet.

7. Time required for the completion of the works and application of the water to the proposed beneficial use is 5 years *(minimum 1 year – maximum 5 years).*

8. Description of proposed uses:
   a. If water is **not** for irrigation:
      (1) Give the place of use of water: _____ ¼ of _____ ¼ of Section _____ Township _____

      Range _____ B.M.

      (2) Amount of power to be generated: _____ horsepower under _____ feet of head.

      (3) List number of each kind of livestock to be watered _____

      (4) Name of municipality to be served _____, or number of families to be supplied with domestic water _____.

      (5) If water is to be used for other purposes describe: _____

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b. If water is for irrigation, indicate acreage in each subdivision in the tabulation below:

TWP	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
4S	31E	16	40	40	40	40	40	40	40	40									320

Total number of acres to be irrigated 320

c. Describe any other water rights used for the same purposes as described above. None

9. a. Who owns the property at the point of diversion Applicant

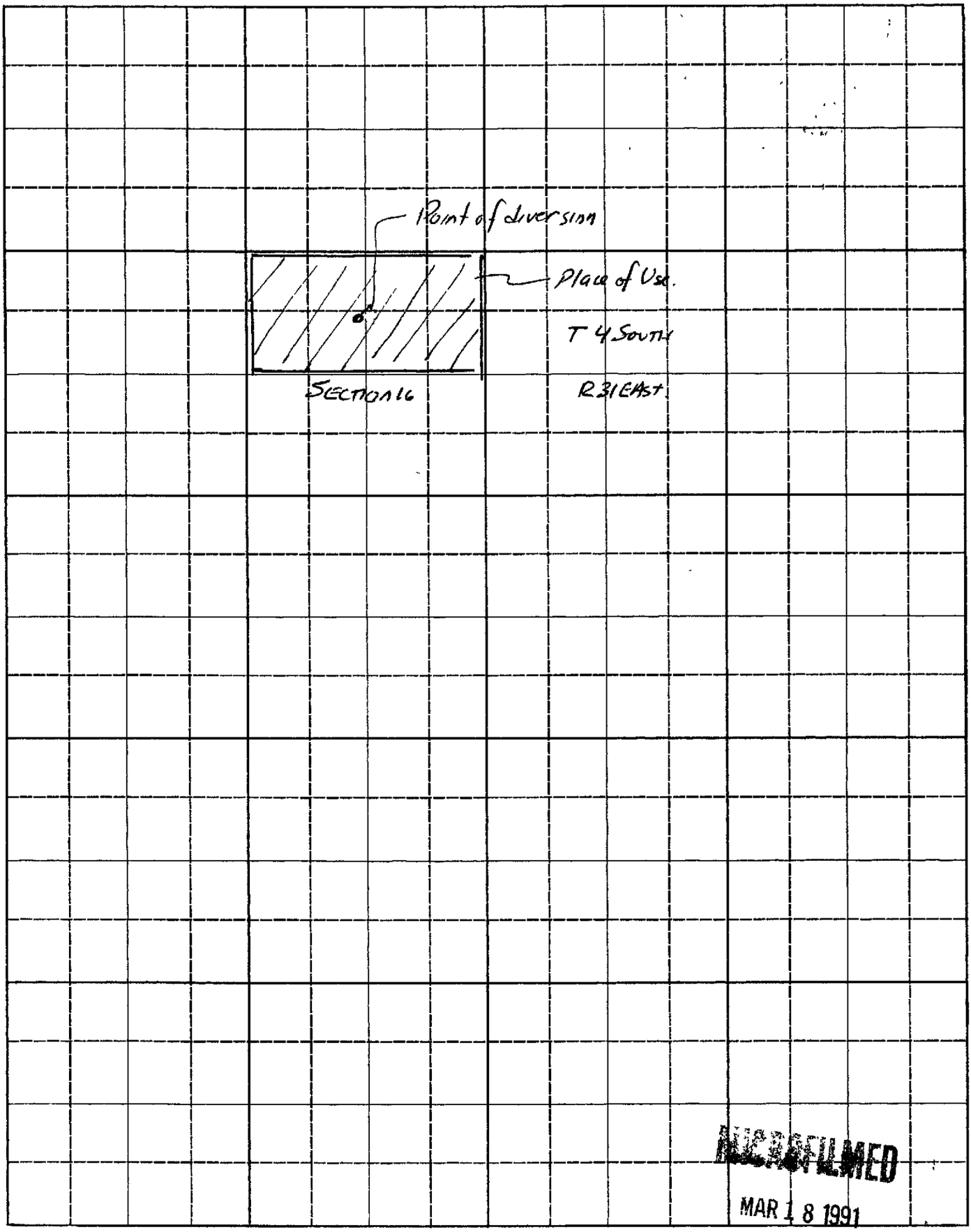
b. Who owns the land to be irrigated or place of use Applicant

c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing

10. Remarks Development of this system occurred April 1, 1981. This application is being made to insure that the benefits of subordination per the Swan Falls agreement are obtained. The applicant plans to claim a priority date of April 1, 1981 if a basin wide adjudication occurs at a later date.

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11. Map of proposed project: show clearly the proposed point of diversion, place of use, section number, township and range number.



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Scale 2 inches equal 1 mile.

BE IT KNOWN that the undersigned hereby makes application for permit to appropriate the public waters of the State of Idaho as herein set forth.

Roy E Hancks
(Applicant)

Received by QW Date 7-01-85 Time 5:50 p

Preliminary check by _____ Fee $ 165.00

Receipted by QW Date 7-01-85 #35423

Publication prepared by CT Date 8-19-85

Published in _____

Publication dates _____

Publication approved _____ Date _____

Protests filed by: _____

_____

_____

Copies of protests forwarded by _____

Hearing held by _____ Date _____

Recommended for approval denial by _____

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Permit to appropriate the public waters of the State of Idaho No. _____ , and said application is hereby _____ .

1. Approval of said application is subject to the following limitations and conditions:

   a. SUBJECT TO ALL PRIOR WATER RIGHTS.

   b. Proof of construction of works and application of water to beneficial use shall be submitted on or before _____ , 19____ .

   c. The rate of diversion, if water is to be used for irrigation under this permit, when combined with all other water rights for the same land shall not exceed 0.02 cubic feet per second for each acre of land.

   d. Other:

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MAR 18 1991

IN THE MATTER OF:)
)
)
)
)
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)
)

AFFIDAVIT

RECEIVED
JUL 1 1985
Department of Water Resources
Eastern Idaho Office

State of Idaho)
County of _____)

ROY E. HINCKS being first duly sworn, deposes and says: Development of the water upon the lands described in the attached application occurred on April 1, 1982 R.H.

The water has been used on the North half of Sec. 16, T. 4S, R. 31E.

Roy E Hincks
(Signature)

Subscribed and sworn to before me this 30th day of June, 1985

Leah I. Ekins
(Notary Public)

Residing at Springfield, Idaho.
My Commission Expires June 19, 1991.

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MAR 18 1991

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098
Phone: (208) 327-7900 FAX: (208) 327-7866

November 12, 1999

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

RE: In the matter of Application for transfer No. 5436 in the name of Jerome Cheese Company

Dear Interested Parties:

The accompanying order is a "**amended preliminary order**" issued by the department pursuant to section 67-5243, Idaho Code. It can and will become a final order without further action of the department unless a party petitions for reconsideration within fourteen (14) days after issuance as further described below:

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a preliminary order with the hearing officer within fourteen (14) days of the service date of this order. The hearing officer will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See section 67-5243(3) Idaho Code.

EXCEPTIONS AND BRIEFS

Within twenty-one (21) days after (a) the service date of a preliminary order, (b) the service date of a denial of a petition for reconsideration from this preliminary order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this preliminary order, any party may in writing support or take exceptions to any part of a preliminary order and may file briefs in support of the party's position on any issue in the proceeding to the Director. Otherwise, this preliminary order will become a final order of the agency.

If any party appeals or takes exceptions to this preliminary order, opposing parties shall have twenty-one (21) days to respond to any party's appeal. Written briefs in support of or taking exceptions to the preliminary order shall be filed with the Director. The director retains the right to review the preliminary order on his own motion.

ORAL ARGUMENT

If the Director grants a petition to review the preliminary order, the Director shall allow all parties an opportunity to file briefs in support of or taking exceptions to the preliminary

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JUL 26 2000

Database Updated per Order.
06-09-2000

T-5436 Jerome Cheese Co

order and may schedule oral argument in the matter before issuing a final order. If oral arguments are to be heard, the Director will within a reasonable time period notify each party of the place, date and hour for the argument of the case. Unless the Director orders otherwise, all oral arguments will be heard in Boise, Idaho.

CERTIFICATE OF SERVICE

All exceptions, briefs, requests for oral argument and any other matters filed with the Director in connection with the preliminary order shall be served on all other parties to the proceedings in accordance with Rules of Procedure 302 and 303.

FINAL ORDER

The Director will issue a final order within fifty-six (56) days of receipt of the written briefs, oral argument or response to briefs, whichever is later, unless waived by the parties or for good cause shown. The Director may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. The department will serve a copy of the final order on all parties of record.

Section 67-5246(5), Idaho Code, provides as follows:

> Unless a different date is stated in a final order, the order is effective fourteen (14) days after its issuance if a party has not filed a petition for reconsideration. If a party has filed a petition for reconsideration with the agency head, the final order becomes effective when:
>
> (a) the petition for reconsideration is disposed of; or
> (b) the petition is deemed denied because the agency head did not dispose of the petition within twenty-one(21) days.

APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, if this preliminary order becomes final, any party aggrieved by the final order or orders previously issued in this case may appeal the final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which:

i. A hearing was held,
ii. The final agency action was taken,
iii. The party seeking review of the order resides, or
iv. The real property or personal property that was the subject of the agency action is located.

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JUL 2 6 2000

The appeal must be filed within twenty-eight (28) days of this preliminary order becoming final. See section 67-5273, Idaho Code. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.

Sincerely,

L. Glen Saxton

L. GLEN SAXTON, Chief
Water Allocation Bureau

Enclosure

c: IDWR Region
City of Jerome

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JUL 2 6 2000

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

Transfer No. 5436
5436

APPLICATION FOR TRANSFER OF WATER RIGHT

PART 1

Name of applicant Jerome Cheese Co. Phone 324-8806

Post Office address C/O Attn: Rex Minchey, PO Box 485, Jerome, ID 83338

DENIED Order dated 10-12-1999 Amended Order dated 11-12-1999

A. PURPOSE OF TRANSFER

1. ☐ Change point of diversion ☒ Add diversion point(s) ☒ Change place of use
   ☒ Change nature of use ☒ Change period of use ☒ Other Split right
2. Describe the reason for the proposed changes Convert a portion of the water right from irrigation to commercial use in a cheese factory.

B. DESCRIPTION OF RIGHT(S) OR PORTION THEREOF, AFTER THE REQUESTED CHANGE

1.

Right Number	Priority	Amount (cfs/ac-ft)	Nature of Use	Period of Use
35-08606D	7-1-1985	3.20 cfs	Commercial	1-1 to 12-31
		480.0		to
				to
				to

2. Total amount of water being transferred 3.20 cubic feet per second and/or 480.0 acre-feet per annum.
3. Source of water Groundwater tributary to
4. Point(s) of Diversion:

DENIED 10-12-1999 11-12-1999

Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion
	SE	NW	NE	25	8S	16E	Jerome	Two wells

5. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	
8S	16E	25		C															

DENIED Order Dated 10-12-1999 11-12-1999

MICROFILMED JUN 26 2000

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PART 1

6. General Information.

a. Description of diversion system Two connected wells & pumps, mainlines to cheese plant (main well & backup well).

b Are the lands from which you propose to transfer the water right subject to any liens, deeds of trust, mortgages, or contracts? _____ Yes ✓ No. If yes, provide a notarized statement from the holder of the lien, deed of trust, mortgage or contract agreeing to the proposed changes.

c. Describe the affect on the land now irrigated if the place of use is changed pursuant to this transfer:
Land will no longer be irrigated.

d. Remarks:
This application will provide additional water above what is being requested under Transfer 5401.
Property is Lot 1 Blk. 2 in Jerome South Industrial Park. Water will wash processing equipment & wash cheese during production.

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Transfer of Water Rights No. _____

And said application is hereby _____, subject to the following limitations and conditions:

Witness my hand this _____ day of _____, 19 ____.

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JUL 26 2000

PART 2

A. DESCRIPTION OF RIGHT AS RECORDED:

Water Right No. 35-08606

STAGE: LICENSE

BENEFICIAL USE	PERIOD OF USE	DIVERSION RATE	ANNUAL VOLUME
IRRIGATION	04/01 to 10/31	6.07 CFS	1214.0 AF

SOURCE

GROUNDWATER

Priority: 07/01/1985

LOCATION OF POINT(S) OF DIVERSION: NENW , Sec. 16, Township 04S, Range 31E BINGHAM County

PLACE OF USE: IRRIGATION

TWN	RGE	SEC		ACRES		ACRES		ACRES	TOTAL
04S	31E	16	NENE	37	NWNE	40	SWNE	40	
			SENE	36	NENW	40	NWNW	34.2	
			SWNW	36.3	SENW	40			303.5
					Total number of acres irrigated:				303.5

CONDITIONS/REMARKS:

1. This right is for the use of trust water and is subject to review 20 years after the issuance of the permit to determine availability of water and to re-evaluate the public interest.
2. Diversion and use of water under this right is subject to an annual use fee if rules are subsequently promulgated which provide for the submittal of the fee.
3. The Director retains jurisdiction of the right and may change, add, or remove any requirement as determined to be appropriate.
4. This right when combined with all other rights shall provide no more than .02 cfs per acre nor more than 4.0 afa per acre for irrigation of the lands above.

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JUL 26 2000

PART 2

Transfer No. 5436

10 To your knowledge, has any portion of this water right undergone a period of five or more consecutive years of non-use?

No If yes, describe _____

B. DESCRIPTION OF PORTION OF RIGHT BEING TRANSFERRED

(If the entire right is to be changed by the applicant, omit part B and C.)

1 amount 3.20 cfs for Irrigation purposes from 4-1 to 10-31
(cfs/ac-ft)
amount 480.0 AFA for _____ purposes from _____ to _____
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)

2 Point(s) of Diversion: As licensed

Lot	¼	¼	¼	Sec	Twp	Rge.	County	Local name for diversion

3. Lands irrigated or place of use

Twp.	Rge	Sec.	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	
45	3E	16	4		40	36		7.7	36.3	40									160

Total acres 160

C. DESCRIPTION OF UNCHANGED PORTION OF RIGHT *(omit if there is no change)*

1 amount 2.87 cfs for Irrig. purposes from 4-1 to 10-31
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)

2 Point(s) of Diversion As licensed

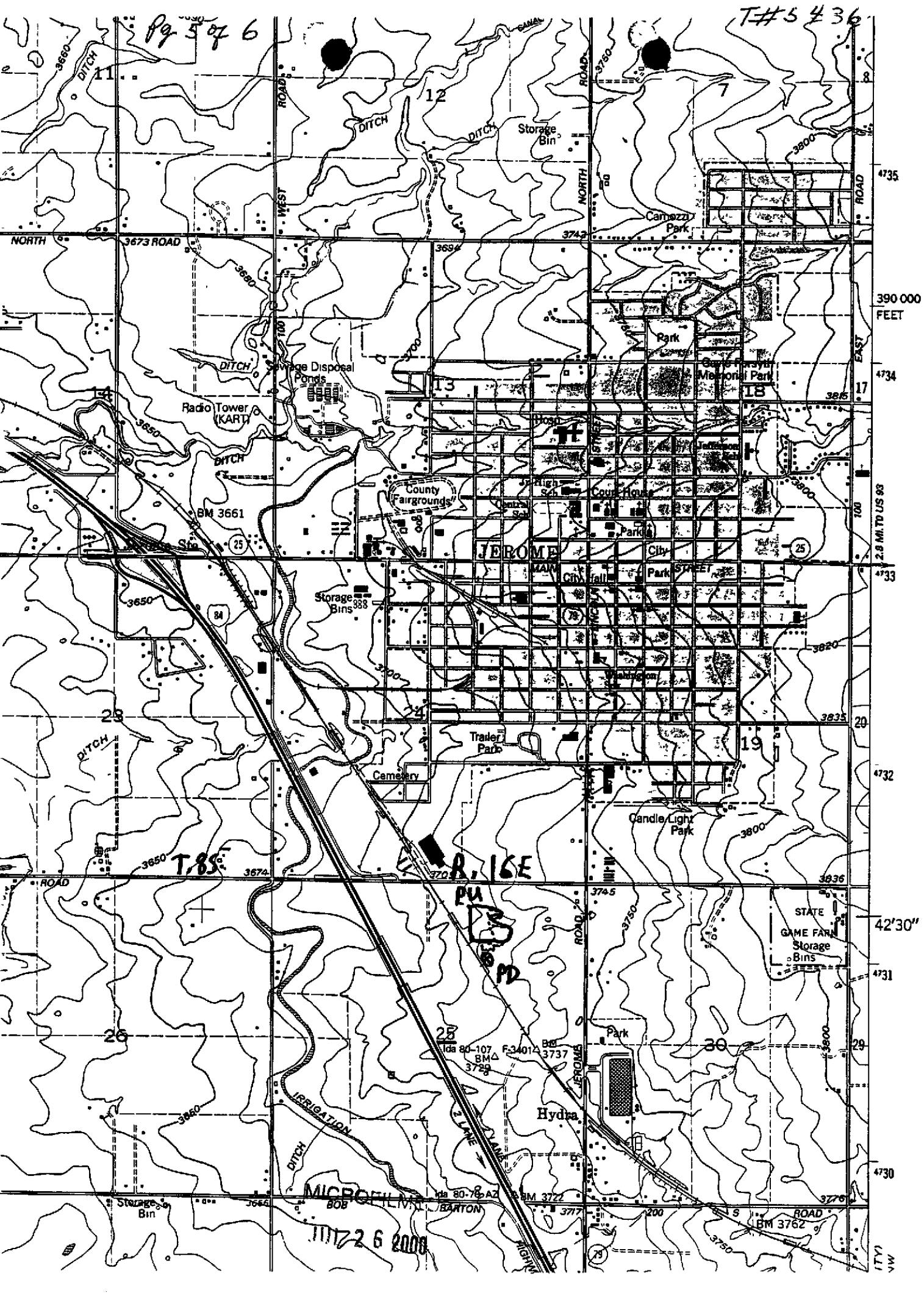
Lot	¼	¼	¼	Sec.	Twp	Rge.	County	Local name for diversion

3. Lands irrigated or place of use. Note: Entire licensed parcel is being dried up thru several transfer

Twp.	Rge.	Sec.	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	
45	3/E	16	37	40			40	26.5											143.5

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1111 2 6 2000

Total acres 143.5


Pg 576
T#5436
DITCH
ROAD
WEST
NORTH
3673 ROAD
Storage Bin
Camozzi Park
EAST
390 000 FEET
Sewage Disposal Ponds
Radio Tower (KART)
Park
Gayle Forsyth Memorial Park
Hosp
High Sch
Court House
Jefferson Sch
County Fairgrounds
Central Sch
BM 3661
JEROME
MAIN
City Hall
Park
STREET
2.8 MI. TO US 93
Storage Bins
Trailer Park
Cemetery
Candle Light Park
T.8S.
R.16E
STATE GAME FARM Storage Bins
42'30"
Ida 80-107 BM 3729
F-3401
BM 3737
Hydra
IRRIGATION
LATERAL
Ida 80-78 AZ
BM 3727
MICRO TIMES
BOB BARTON
BM 3762
RIGHT
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1172 2000

Transfer No. 5436

PART 3

B. CHANGES IN NATURE OF USE

1	New Nature of Use	Amount (cfs/ac-ft)	Hours/days/year	Period of Use
	Commercial	3.20 cfs	as needed	1-1 to 12-31
		480.0 AFA		to

2. Quantity and quality of return flows and location of discharge:
With the plant planned increase in production, a total of 425,000 gpd of potable water will be discharged into the NSCC system. The Jerome treatment plant will see a small increase in effluent.

3. Describe effects on other water uses resulting from the proposed change:
Should have no effect.

I hereby assert that no one will be injured by such change and that the change does not constitute an enlargement in use of the original right. The information contained in this application is true to the best of my knowledge.

I understand that any willful misrepresentations made in this application may result in voiding its approval.

J. Ron Rudy maintenance manager
(Signature of Applicant)

Subscribed and sworn to before me this 8th day of March, 1999.

J. E. Stanton
(Notary Public)

My commission expires 10-25-2000

FOR DEPARTMENT USE ONLY

Transfer contains 6 pages and 1 attachments

Received by J. E. Stanton Date 3-8-99 Protest filed by

Prelim. check by JS Fee $100. S02/850

Receipted by JS Date 3-8-99

Published in The Morning News & Northside News Copies of protest forwarded by

Pub. dates 4/15 & 4/22/99 Hearing held by Date

Watermaster recommendation requested on N/A Recommended for ☐ approval ☐ denial

rec'd. by

Copy of transfer sent to lien holder

MICROFILMED

NOV 26 2000

RECEIVED

MAR 09 1999

Department of Water Resources
Southern Region

DUPLICATE
MEMORANDUM OF AGREEMENT

THIS AGREEMENT Made and entered into this 3 day of MARCH, 1999, by and between Roy Hincks, Sterling, Idaho (hereinafter "Vendor") and DAVISCO FOODS, INC., dba Jerome Cheese Company, P.O. Box 485, Jerome, Idaho (hereinafter "Vendee").

WITNESSETH:

WHEREAS, Vendor is the owner of a license, or permit, for approximately 400 inches of ground water, which ground water is Water Rite number 35-08606 on file with the Idaho Department of Water Resources; and,

WHEREAS, Vendee is the owner of a cheese plant located in Jerome County, Idaho; and,

WHEREAS, Vendor desires to sell to Vendee, and Vendee desires to purchase from Vendor, 160 inches of the above described water for the sum of four hundred dollars ($400.00) per inch, for a total amount of Sixty Four thousand dollars ($64,000.00).

NOW, THEREFORE, it is agreed between the parties as follows:

1. In consideration of the sum of $64,000.00, Vendor sells and Vendee purchases 160 inches of ground water.

2. The agreed purchase price of $64,000.00 shall be payable as follows;

Two Thousand Dollars ($2,000.00) Ernest monies cash. And the balance of Sixty Two Thousand dollars ($62,000.00) upon completion of the appropriate property descriptions have been identified and the Department of Water Resources has approved the transfer.

3. The cash will be deposited in the Land Title & Escrow Inc. Trust Account and held until such time as the appropriate property descriptions have been identified and the Department of Water Resources has approved the transfer.

4. Vendor makes no warranties or guarantees that the transfer will be approved by the Department of Water Resources.

5. Vendee acknowledges that it has ascertained, from sources other than Vendor, the applicable zoning and other regulatory ordinances regarding the use of the 160 inches of water and Vendor has made no representations with respect thereto.

This agreement shall be binding upon the heirs, personal representatives, administrators, successors and assigns of the parties hereto.

In the event this water cannot be transferred within 120 days, this agreement shall be void and the money returned to Vendee. It being understood that the money shall be deposited in the Land Title & Escrow Inc. Trust Account, which is a non-interest bearing account. In the event the parties wish to extend this agreement beyond the 120 days hereof, they shall so indicate in writing. However, each party agrees to be responsible for paying one-half (1/2) the costs of the Land Title & Escrow Inc fees for the escrow account.

IN WITNESS WHEREOF, the parties have hereunto set their hands the day and year first above written.

DAVISCO FOOD, INC.
dba Jerome Cheese Company

Roy Hincks
SS# 518-32-2613
2851 W. 900 S
Sterling, Idaho 83210
"VENDOR"

BY: Jon Davis
MANAGER

MICROFILMED
NOV 26 2000

T#5436

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NOV 10 1999
Department of Water Resources

Lee J. Halper
331 S 230 W
Jerome, ID 83338
208-324-2240

BEFORE THE IDAHO
DEPARTMENT OF WATER RESOURCES

In the matter of Application for Transfer No. 5436 (Water Right No. 35-08606	)	
Lee Halper, Protestant	)	Response to Petition for Reconsideration (Hincks Right)
Jerome Cheese, Applicant	)	

Comes now Lee Halper, Protestant, and responds to Applicant's Petition for Reconsideration.

I take issue with Argument points 1, 2, 5, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17 and with Relief points 1, 2 & 3. At this time, since all of these concerns are based on Dr. Brockway's testimony or related to this testimony, and since Applicant has not provided Protestant with a copy of the transcript of that testimony, (this is supporting evidence referred to only and not provided) Protestant cannot fully evaluate, in detail, sufficient answers, responses or rejoinders at this time without said evidence.

I would request a minimum of 14 working days after receipt of a certified transcript of Dr. Brockway's testimony to submit adequate response. Since this transcript is essential to Applicant's Petition I would request the Department to ensure that Applicant provide said transcript to Protestants as part of normal service. At that time, I reserve the right to also respond to the Timing section of the Petition.

As to the Conclusion, the folly involved in asking for an indefinite time of suspension of action is tantamount to asking the Department to admit it is totally ignorant and not capable of reasoned, logical and experiential thought and should be rejected outright. Following established procedure in resolving this case is necessary to the flow of work product and stability and trust in the Department. If the Department were to allow suspension of activity to one, it would be necessary to do it for all. This may unduly cause harm to unrelated cases and the Department would open itself to a multitude of lawsuits of a prejudicial nature, harming the State.

Dated this 8th day of November, 1999

Lee Halper, Protestant

MICROFILMED
JUL 26 2000

CERTIFICATE OF SERVICE

I hereby certify that on November 8th, 1999 I caused to be served a true and correct copy of the foregoing to each of the persons named below by the method indicated below each of their names.

Mr. Bill Chisholm
19073 E. Hwy 30
Buhl, ID 83316
Via E-Mail

Robert E. Williams
117 South Adams Street
P.O. Box 168
Jerome, ID 83338
Via E-Mail

Original to:
Mr. L. Glen Saxton
Idaho Department of Water Resources
PO Box 83720
Boise, ID 83720-0098
Via US Mail

Mr. Michael Ihler
2635-A East 3100 North
Twin Falls, ID 83301
Via E-Mail

Mr. Christopher H. Meyer
Givens Pursley LLP
PO Box 2720
Boise, ID 83701-2720
Via US Mail

Ms. Darcy Thornborrow
1676 East 3800 North
Buhl, ID 83316
Via E-Mail

Mr. Allen D. Merritt
Idaho Department of Water Resources
1341 Fillmore St.
Suite 200
Twin Falls, Id 83301-3380
Via E-Mail

Lee Halper

MICROFILMED
JUL 26 2000

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098
Phone: (208) 327-7900 FAX: (208) 327-7866

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

October 29, 1999

RE: In the Matter of Application for Transfer No. 5436 in the name of Jerome Cheese Company

Dear Interested Party:

I have enclosed a copy of the Order Granting Petition for Reconsideration, issued in connection with above referenced transfer application.

If you have any questions concerning the enclosed document, please contact me directly at (208)327-7953.

Sincerely,

Julie L. Yarbrough

JULIE L. YARBROUGH, Administrative Assistant
Water Allocation Bureau

Enclosure

c: IDWR Southern - A. Merritt
City of Jerome

MICROFILMED
JUL 26 2000

ORIGINAL

Christopher H. Meyer, Esq. (Idaho State Bar No 4461)
Michael C. Creamer, Esq. (Idaho State Bar No 4030)
GIVENS PURSLEY LLP
277 North 6th Street, Suite 200
P.O. Box 2720
Boise, Idaho 83701-2720
Office: 208-388-1200
Fax: 208-388-1300
Counsel for Applicant Jerome Cheese

RECEIVED
OCT 26 1999
Department of Water Resources

BEFORE THE
IDAHO DEPARTMENT OF WATER RESOURCES

In the Matter of Application For Transfer Nos. 5436 (Water Right No. 35-08606) Jerome Cheese, Applicant William K. Chisholm, Lee J. Halper, Michael Ihler, Darcy Thornborrow, Protestants	**PETITION FOR RECONSIDERATION (HINCKS RIGHT)**

INTRODUCTION

COMES NOW Applicant Davisco Foods International, Inc., dba Jerome Cheese Company ("Applicant," "Jerome Cheese" or the "Company"), by and through its attorneys, Givens Pursley LLP, and submits this petition for reconsideration.

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JUL 26 2000

ARGUMENT

In support of its petition, Applicant states as follows:

1. The application for transfer of a water right was denied on a single basis. The Department concluded that the Applicant failed to demonstrate that the ground water located at the original point of diversion would reach (or hydrologically influence) the new point of diversion, if the original pumping were curtailed.

2. None of the other issues raised by any of the Protestants or the City of Jerome were found to have merit.

3. Specifically, the Preliminary Order stated:

> "The applicant's expert testified that if ground water is not pumped at the Hincks well, most of the ground water is tributary to the Snake River upstream of either Neeley or Minidoka and would not again be available as ground water in the Snake Plain Aquifer. Only a small, unquantified portion of the ground water not diverted at the Hincks well would reach the Jerome area as ground water." Finding of Fact No. 10.
>
> "The proposed point of diversion by the applicant for the cheese plant is within the Snake Plain Aquifer area. Since only a small unquantified portion of ground water which would not be pumped at the Hincks well would reach the proposed new well(s) located about 90 miles to the southwest, the diversion of 3.2 cfs or the majority thereof at the proposed new well(s) would have the same physical effect as a new appropriation of ground water and would

cause injury because it would have a senior priority over validly established water rights held by junior appropriators." Conclusion of Law No. 7

4. The expert referred to in the Preliminary Order is Charles E. Brockway, Ph.D., P.E., of Brockway Engineering, P.L.L.C., who appeared on behalf of the Applicant.

5. Dr. Brockway was the only expert who testified on this subject. None of the Protestants or the City of Jerome offered any expert testimony on the subject. Nor was any offer of proof submitted on this subject. None of the Protestants extracted any relevant and material concessions or contradictions in their cross-examination of Dr. Brockway. Thus, Dr. Brockway's testimony on this subject is undisputed.

6. Dr. Brockway's testimony is now being transcribed, and will be made available to the Department as soon as it is completed.

7. Contrary to the Preliminary Order, Dr. Brockway did not state that "most" of the ground water from the original point of diversion is tributary to the Snake above Neeley or Minidoka. Nor did he state that only a "small" amount of water from the Hincks diversion point would reach the Jerome area and/or Thousand Springs.

8. Dr. Brockway acknowledged that some of the ground water at the original point of diversion is tributary to the Snake above Milner Dam, and that the balance flows in the direction of the proposed new points of diversion near Jerome (and ultimately to the

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JUL 26 2000

Thousand Springs area).

9. At the hearing, Dr. Brockway stated that he was unable, at that time, to quantify how much of the ground water would reach the Snake above Milner versus how much flowed toward Jerome and Thousand Springs. Although Dr. Brockway was unable to place any precise number on the division, he did indicate that a substantial quantity (as opposed to a "small" amount) of the ground water flowed toward the Jerome area.

10. Dr. Brockway's testimony, as summarized above, is not consistent with the statement in the Preliminary Order that "most" of the water will fall into the Snake above Jerome, and that only a "small" amount will reach wells in the Jerome area.

11. Dr. Brockway also testified to the projected "water budget" for the proposed new use of the Hincks right. The water budget took into account water conservation practices at the plant (which reduced the need for input water) and the addition of new water inputs to the system (so-called "cow water" extracted from milk, as well as "moisture in product"). Dr. Brockway concluded that, owing to these new inputs, the system-wide operation is not only non-consumptive, but that it actually adds water to the hydrological system.

12. Dr. Brockway testified that, taking into account (1) the water budget and (2) the "substantial" amount of water which would reach Jerome from the Hincks point of diversion, it is reasonable to conclude that Jerome area would experience a net improvement in water availability as a result of the transfer.

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13. Although Dr. Brockway was careful to avoid offering a legal conclusion, it follows readily that a net improvement in the availability of water to the area means that the transfer will not result in injury to other users in the vicinity of Jerome.

14. It bears emphasis that Dr. Brockway's conclusion of a net improvement in water availability is specific to this transfer, and would not necessarily be applicable to other transfers of water from the Hincks right, or that area. The critical distinction is the unique water budget calculation which is substantially influenced by the addition of substantial quantities of cow water and product moisture water.

15. Cow water and product moisture water, as established at the hearing, is "new" to the system. (This is because any water used in the creation of the cow water and the product moisture water, would have been deemed to have been consumptively used, lost to the system and so accounted for in other water rights.) Thus the reintroduction of cow water and product moisture water to the hydologic system in the Jerome area may legally be viewed as developed water.

16. Dr. Brockway's evidence concerning the water budget was not contradicted by any other expert witness.

17. The Preliminary Order failed to address or take into account the water budget analysis offered by Dr. Brockway.

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RELIEF

For each of these reasons, the Applicant requests that the Preliminary Order be modified in the following respects:

1. The Preliminary Order should be modified to reflect that the only expert testimony on the subject concluded that a substantial portion of the ground water at the original point of diversion, if not pumped there, will flow toward wells in the Jerome area.

2. The Preliminary Order should be modified to reflect the "water budget" for the proposed new use of water, as described and quantified by Dr. Brockway, shows a net gain to the hydrological system (due to the introduction of cow water and product moisture water).

3. For these reasons, the Preliminary Order should be modified to conclude that the proposed transfer will not injure other ground water users in the Jerome area.

TIMING

For the reasons stated above, we believe that there is sufficient credible evidence in the record (and no contrary evidence) to demonstrate, today, that the Hincks right may be transferred to Jerome Cheese without injury. We believe this may be accomplished even without a precise quantification of the portion of ground water from the original point of diversion which flows toward the Jerome area.

On the other hand, if the Department determines that it cannot make a finding of

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no injury on the basis of the record today, then we ask that the Department suspend further action on the transfer application until such information may be obtained.

For instance, the IDWR Snake Plain Aquifer Ground Water Model could be utilized to specifically evaluate a change in ground water use at the Hincks point of diversion.

Moreover, it is our understanding that additional work aimed at more fully calibrating this model is now underway, and that further efforts in this regard appear likely to occur over the course of the next two years or more by the Department, in cooperation with water users, academics and other interested parties.

It is very likely that as these efforts unfold, it will be possible to more precisely characterize the direction and quantity of flow from the Hincks point of diversion. At that time, the Department will be in a better position to rule on the basis of the newly recalibrated model just how much of the flow is likely to reach the Jerome area, and whether that is sufficient to support a transfer.

While a delay of this magnitude in the processing of this transfer application is not desirable from the Applicant's perspective, the Company is prepared to accept such a delay rather than the loss of this water right altogether.

CONCLUSION

We ask that the Department reverse the decision in the Preliminary Order, and approve the application on the basis of information in the record today. In the alternative,

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JUL 26 2000

if the Department cannot do so, we ask that the Department suspend all action on the application until additional information is developed concerning the ground water model for the Snake Plain Aquifer.

Dated this 26th day of October, 1999.

GIVENS PURSLEY LLP

By _____
Christopher H. Meyer

Attorneys for Applicant
Jerome Cheese Company

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JUL 26 2000

CERTIFICATE OF SERVICE

I hereby certify that on August 31, 1999 I caused to be served a true and correct copy of the foregoing Petition for Reconsideration together with supporting affidavit to each of the persons named below by the method indicated below each of their names.

Patrick D. Brown, Esq.
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Christopher H. Meyer

MICROFILMED
JUL 26 2000

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Office: 208-388-1200
Fax: 208-388-1300
Counsel for Applicant Jerome Cheese

BEFORE THE
IDAHO DEPARTMENT OF WATER RESOURCES

In the Matter of Application For Transfer Nos. 5436 (Water Right No. 35-08606) Jerome Cheese, Applicant William K. Chisholm, Lee J. Halper, Michael Ihler, Darcy Thornborrow, Protestants	**AFFIDAVIT OF CHARLES E. BROCKWAY, PH.D., P.E.**

STATE OF IDAHO)
) ss:
COUNTY OF TWIN FALLS)

CHARLES E. BROCKWAY, being first duly sworn on oath, deposes and says:

1. I am an expert retained by Jerome Cheese Company in connection with the above-captioned application for transfer of water right. I testified in support of the application at the hearing conducted in Twin Falls on July 27 and 28, 1999.

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2. I am the only expert who testified with respect to the impact of the proposed transfer on the hydrological water balance and the potential impacts on other water users.

3. I was consulted by counsel who sought my assistance in the preparation of the Petition for Reconsideration to be filed on this date in this proceeding.

4. I have reviewed in the Petition for Reconsideration. I concur in each of the factual statements contained in that Petition, of which I have knowledge.

5. In particular, I have reviewed the statements which summarize my testimony at the July hearing. Although I have not reviewed a transcript of the hearing (because it has not yet been completed), the statements concerning my testimony in the Petition for Reconsideration are accurate and complete to the best of my recollection.

6. Those statements, and the Petition as a whole, faithfully reflect my views and positions as an expert on behalf of the Applicant.

Your affiant further sayeth not.

Charles E. Brockway

SUBSCRIBED AND SWORN TO before me this 26th day of October, 1999.

MARY A. BALDWIN NOTARY PUBLIC STATE OF IDAHO

Notary Public for Idaho
Residing at Twin Falls, Id
My Commission expires: 10/16/2004

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JUL 26 2000

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098
Phone: (208) 327-7900 FAX: (208) 327-7866

October 12, 1999

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

RE: In the matter of Application for transfer No. 5436 in the name of Jerome Cheese Company

Dear Interested Parties:

The accompanying order is a "**preliminary order**" issued by the department pursuant to section 67-5243, Idaho Code. It can and will become a final order without further action of the department unless a party petitions for reconsideration within fourteen (14) days after issuance as further described below:

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a preliminary order with the hearing officer within fourteen (14) days of the service date of this order. The hearing officer will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See section 67-5243(3) Idaho Code.

EXCEPTIONS AND BRIEFS

Within twenty-one (21) days after (a) the service date of a preliminary order, (b) the service date of a denial of a petition for reconsideration from this preliminary order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this preliminary order, any party may in writing support or take exceptions to any part of a preliminary order and may file briefs in support of the party's position on any issue in the proceeding to the Director. Otherwise, this preliminary order will become a final order of the agency.

If any party appeals or takes exceptions to this preliminary order, opposing parties shall have twenty-one (21) days to respond to any party's appeal. Written briefs in support of or taking exceptions to the preliminary order shall be filed with the Director. The director retains the right to review the preliminary order on his own motion.

ORAL ARGUMENT

If the Director grants a petition to review the preliminary order, the Director shall allow all parties an opportunity to file briefs in support of or taking exceptions to the preliminary

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JUL 26 2000

order and may schedule oral argument in the matter before issuing a final order. If oral arguments are to be heard, the Director will within a reasonable time period notify each party of the place, date and hour for the argument of the case. Unless the Director orders otherwise, all oral arguments will be heard in Boise, Idaho.

CERTIFICATE OF SERVICE

All exceptions, briefs, requests for oral argument and any other matters filed with the Director in connection with the preliminary order shall be served on all other parties to the proceedings in accordance with Rules of Procedure 302 and 303.

FINAL ORDER

The Director will issue a final order within fifty-six (56) days of receipt of the written briefs, oral argument or response to briefs, whichever is later, unless waived by the parties or for good cause shown. The Director may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. The department will serve a copy of the final order on all parties of record.

Section 67-5246(5), Idaho Code, provides as follows:

> Unless a different date is stated in a final order, the order is effective fourteen (14) days after its issuance if a party has not filed a petition for reconsideration. If a party has filed a petition for reconsideration with the agency head, the final order becomes effective when:
>
> (a) the petition for reconsideration is disposed of; or
> (b) the petition is deemed denied because the agency head did not dispose of the petition within twenty-one(21) days.

APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, if this preliminary order becomes final, any party aggrieved by the final order or orders previously issued in this case may appeal the final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which:

i. A hearing was held,
ii. The final agency action was taken,
iii. The party seeking review of the order resides, or
iv. The real property or personal property that was the subject of the agency action is located.

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JUL 2 6 2000

The appeal must be filed within twenty-eight (28) days of this preliminary order becoming final. See section 67-5273, Idaho Code. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.

Sincerely,

L. Glen Saxton

L. GLEN SAXTON, Chief
Water Allocation Bureau

Enclosure

c: IDWR Region
City of Jerome

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JUL 26 2000

RECEIVED
AUG 3 1 1999
Department of Water Resources

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Counsel for Applicant Jerome Cheese

BEFORE THE
IDAHO DEPARTMENT OF WATER RESOURCES

In the Matter of Application For Transfer Nos. 5401(Water Right No. X36-07337E)

Jerome Cheese,
Applicant

William K. Chisholm,
Lee J. Halper,
Protestants

In the Matter of Application For Transfer Nos. 5436 (Water Right No. 35-08606)

Jerome Cheese,
Applicant

William K. Chisholm,
Lee J. Halper,
Michael Ihler,
Darcy Thornborrow,
Protestants

APPLICANT'S LIMITED RESPONSE TO CITY OF JEROME'S PUBLIC WITNESS STATEMENT

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JUL 2 6 2000

COMES NOW Applicant Davisco Foods International, Inc., dba Jerome Cheese Company ("Applicant," "Jerome Cheese" or the "Company"), by and through its attorneys, Givens Pursley LLP, and responds to the City of Jerome's public witness statement of August 13, 1999.

On July 2, 1999, the Hearing Officer in this matter denied the motion of the City of Jerome (the "City") to intervene in this matter. On July 23, 1999, the Hearing Officer denied the City's motion for reconsideration and motion to file a late protest. In his July 23, 1999 order, however, the Hearing Officer extended the deadline for the City to file a public witness statement. The City filed its public witness statement pursuant to that order. This constitutes Jerome Cheese's limited response to the City's public witness statement.

Jerome Cheese and the City of Jerome are now engaged in negotiations aimed at resolving all of the outstanding issues between the Company and the City. Specifically, the negotiations are aimed at: (1) withdrawal of the City's objections to the water right transfers which are the subject of this proceeding, (2) developing a working arrangement regarding the Company's continued use of City water for backup and fire protection use, (3) withdrawal of the City's proposed annexation of the land occupied by Jerome Cheese, and (4) agreement on an extension of the wastewater treatment contract which is set to expire at the end of the year.

At this point in the negotiations, we are optimistic that an agreement can be reached on the first item (withdrawal of the City's objection to these water right transfers) within a very short period of time, with a broader agreement to follow shortly on the remaining issues.

In order to avoid unnecessarily cluttering the record with respect to issues which may soon be resolved, Jerome Cheese requests that this limited response be allowed to serve conditionally as Jerome Cheese' response to the City's public witness statement. Jerome Cheese respectfully reserves the right to respond more fully in the future, in the unlikely event of a breakdown of negotiations.

In the event that the City and the Company are able to speedily resolve their differences (which we fully anticipated occurring), most of the issues raised by the City in its public witness statement will be mooted. For instance, we expect that the entire discussion concerning the expiration of the wastewater treatment contract will be resolved in short order with a renewal of the contract. The same is true for those paragraphs dealing with potential annexation.

As for the City's discussion of what it terms "expansion" of Jerome Cheese's water use, we think that a limited response is in order at this time in any event. Addressing the possibility of expansion or enlargement of a water right plainly falls within the Department's bailiwick, even if the City drops its opposition to the transfers. Consequently, the Company offers the following comments.

The City does not appear to be using the term "expansion" in the same sense as the term is employed in Idaho water law. Idaho water law is concerned with the expansion of particular water rights. Our water law does not concern itself with the expansion of a company's overall operations nor its overall portfolio of water supplies. (The only exception to this would be a municipal supplier seeking a future need water right, which, of course, is not applicable here.)

No water right connected with these proposed transfers is being expanded in use. First, the City's existing water rights are not at issue before the Department. However, even if they were, they are not being expanded. Plainly, the City is free to use its water rights to serve any municipal purpose anywhere within its service area. The City may continue to serve Jerome Cheese, or it may not. To the extent the City shifts service away from Jerome Cheese and begins or increases service to other users within its service area, that does not constitute an "expansion" or "enlargement" of the City's water right, as those terms are understood in Idaho water law. This assumes, of course, that the City stays within the bounds of its permitted or licenced quantities.

Second, there is no conceivable way that either of the irrigation rights subject to transfer will constitute an "enlargement" or "expansion" in use. Those words are ordinarily employed in the evaluation of a situation where the use remains the same, but there is a question about whether the existing use is being enlarged or expanded. Where the use is switched to an entirely new use (e.g., from irrigation to industrial), there is no common denominator by which to measure an enlargement or expansion. (Two hundred acres of potatoes are an expansion compared to 100 acres of potatoes. But how do you compare 100 acres of potatoes with 100 pounds of cheese? Talking about "expansion" or "enlargement" simply does not make sense in this context.)

However, the Department typically addresses the concern underlying expansion (as well as injury) by allowing transfer only of the consumptive use component of the original right. In our case, only the consumptive use portion is being transferred. Consequently, there is no basis for the charge of expansion or enlargement, as those terms are employed in Idaho water law.

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JUL 26 2000

Apparently the City has something else in mind. The City alleges in paragraph 14 that the Company might "expand" its use by employing its newly acquired water rights in combination with continued use of municipal supplies. Aside from the fact that this does not present a water law issue properly before the Department, the alleged increase in water use is purely hypothetical. The record from the hearing amply documents that there is not a linear correlation between the Company's use of water and its production of cheese and whey. Because the Company's uses of water are primarily for fixed needs (e.g., equipment cleaning and lawn irrigation), it could substantially increase cheese production without any significant increase in water use.

Even if there were a direct, linear correlation between water and product, it is simply not the Department's concern how, whether or when the Company might choose to expand its operations somewhere down the line. Indeed, virtually any industrial or commercial operation could expand its operations by increasing its use of municipal water and thereby "evading" departmental scrutiny. This simply underscores the fact that it is not the Department's job under the public interest review to take over the environmental review jobs of other federal, state, county and municipal authorities. If the Department wishes to condition the Company's water rights on the acquisition of required permits and approvals, that would be appropriate under the public interest review. But, unless there is some obvious roadblock or compelling public need, the Department should not cross the line into speculation and second-guessing about future environmental permitting by other agencies.

While we do not think it proper for the Department to take over environmental and land use planning functions assigned to other units of government, nor to second guess the economic and business decisions of Idaho water users, we do think it fair for the Department to seek assurances that the water sought by Jerome Cheese is needed for its operation (as opposed to speculative purposes). In a similar vein, the City of Jerome has asked Jerome Cheese to share with the City information concerning its long term water supply plans so that the City may plan accordingly.

The ongoing negotiations between the City and the Company are aimed, in large part, at addressing these concerns. It is anticipated that the City and the Company will work out an understanding whereby the water rights sought in this proceeding will be employed as the Company's primary water source, but that the Company is to continue to remain hooked up to the City's water supply for backup, fire protection, and other purposes.

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JUL 26 2000

Given the expectation of resolution of pending issues between the City and the Company, we believe that this limited response constitutes a sufficient answer to the City's public witness statement. However, if the Department requires further information on any of the points raised, we would be pleased to provide it.

Dated this 31th day of August, 1999.

GIVENS PURSLEY LLP

By _____
Christopher H. Meyer

Attorneys for Applicant
Jerome Cheese Company

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JUL 26 2000

CERTIFICATE OF SERVICE

I hereby certify that on August 31, 1999 I caused to be served a true and correct copy of the foregoing to each of the persons named below by the method indicated below each of their names.

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Christopher H. Meyer

MICROFILMED
JUL 26 2000

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EUGENE D. FREDERICKSEN
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July 26, 1999

L. Glenn Saxton
Hearing Officer
Idaho Department of Water Resources
1301 North Orchard Street
P.O. Box 83720
Boise, Idaho 83720-0098

In re: Application for Transfer Nos. 5401 and 5436 in the name of Jerome Cheese Company

Dear Mr. Saxton:

This letter is intended to indicate that the City of Jerome intends to submit information regarding the above proposed transfers to the hearing officer within twenty-one (21) days from July 23, 1999 in accordance with your order of July 23, 1999.

Very truly yours,

FREDERICKSEN, WILLIAMS & MESERVY

ROBERT E. WILLIAMS

REW/bsb
C:\bsbDocs\Data\City\JeromeCity\JeromeCheese\saxton.ltr.wpd

MICROFILMED
JUL 26 2000

cc:
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JUL 2 6 2000

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098
Phone: (208) 327-7900 FAX: (208) 327-7866

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

July 15, 1999

Christopher H Meyer
GIVENS, PURSLEY & HUNTLEY
277 N. 6th St., Suite 200
P O. Box 2720
Boise, ID 83701

RECEIVED
JUL 16 1999
Department of Water Resources
Southern Region

RE: APPLICATIONS FOR TRANSFER NOS. 5401 AND 5436 IN THE NAME OF JEROME CHEESE CO.

Dear Mr. Meyer:

On July 14, 1999, you submitted Applicant's Request for Clarification Regarding Scope of Hearing to the department in connection with the above referenced applications.

The Order Authorizing Discovery dated June 14, 1999, includes the following provision:

2. Local public interest inquiries must be limited to use of water for "the proposed use" which in this case is by a cheese factory Dairies and their operation are not proper subject matter in Application for Transfer No 5436.

You are correct that this limitation applies to the hearing scheduled on July 27, 1999 for both Applications for Transfer Nos. 5401 and 5436

You state you are confused relative to the issuance of a subpoena for Lewis Eilers, the head of the Idaho Dairy Association. I have not been advised of the nature of testimony that Mr. Eilers may provide at the hearing and at this point believe it would be presumptuous of me to conclude that his testimony would pertain only to dairies thus making the testimony conflict with the limitation described above. Hence, the department issued a subpoena in the name of Mr Eilers.

I trust this letter clarifies the matters for you.

Sincerely,

L. GLEN SAXTON
Hearing Officer

c Bill Chisholm
Lee Halper
Michael Ihler
Darcy Thornborrow
Allen Merritt

Christopher H. Meyer, Esq.
Michael C. Creamer, Esq.
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RECEIVED
JUL 16 1999
Department of Water Resources
Southern Region

BEFORE THE
IDAHO DEPARTMENT OF WATER RESOURCES

In the Matter of Application For Transfer Nos. 5401(Water Right No. X36-07337E)

Jerome Cheese,
Applicant

William K. Chisholm,
Lee J. Halper,
Protestants

In the Matter of Application For Transfer Nos. 5436 (Water Right No. 35-08606)

Jerome Cheese,
Applicant

William K. Chisholm,
Lee J. Halper,
Michael Ihler,
Darcy Thornborrow,
Protestants

APPLICANT'S REQUEST FOR CLARIFICATION REGARDING SCOPE OF HEARING

MICROFILMED
JUL 26 2000

COMES NOW Applicant Davisco Foods International, Inc., dba Jerome Cheese, by and through its attorneys, and respectfully submits this request for clarification regarding the scope of discovery.

On June 14, 1999, Applicant submitted its Motion in Limine and Motion for Protective Order. On June 14, 1999, the Department of Water Resources responded with an Order Authorizing Discovery which provided: "Local public interest inquiries must be limited to use of water for 'the proposed use' which in this case is by a cheese factory. Dairies and their operation are not proper subject matter in Application for Transfer No. 5436." Given that the hearings on Transfer Nos. 5401 and 5436 have been consolidated, Applicant assumes that this limitation applies to both cases.

In reliance on this ruling, Applicant has prepared its evidence for the upcoming hearing to exclude matters beyond the scope as described above. For instance, Applicant has prepared no evidence regarding the environmental and related impacts of the dairy industry on the Magic Valley.

Applicant is confused, however, by the order of the Department of Water Resources dated July 1, 1999 which authorized issuance of a subpoena to Lewis Eilers, the head of the Idaho Dairy Association. It would appear that any testimony which could be offered by Mr. Eilers would fall outside the scope of issues allowed for the hearing.

MICROFILMED
JUL 26 2000

Dated this 14th day of July, 1999.

GIVENS PURSLEY LLP

By _____
Christopher H. Meyer

Attorneys for Applicant
Jerome Cheese

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1111 2 6 2000

CERTIFICATE OF SERVICE

I hereby certify that on July 14, 1999 I caused to be served a true and correct copy of the foregoing to each of the persons named below by the method indicated below each of their names.

Mr. William K. Chisholm
19073 E. Hwy. 30
Buhl, ID 83316
☑ U.S. Mail ☐ Fax ☐ Email ☐ Overnight

Original to
Mr. Karl J. Dreher
Director
Idaho Department of Water Resources
1301 N. Orchard St.
Statehouse Mail
Boise, ID 83720-9000
☑ U.S. Mail ☐ Fax ☑ By hand ☐ Overnight

Mr. Lee J. Halper
331 South 230 West
Jerome, ID 83338
☑ U.S. Mail ☐ Fax ☐ Email ☐ Overnight

Mr. Michael Ihler
2635-A East 3100 North
Twin Falls, ID 83301
☑ U.S. Mail ☐ Fax ☐ Email ☐ Overnight

Allen D. Merritt, P.E.
Southern Regional Manager
Idaho Department of Water Resources
1341 Fillmore St., Ste. 200
Twin Falls, ID 83301-3380
☑ U.S. Mail ☐ Fax ☐ Email ☐ Overnight

Mr. L. Glen Saxton
Idaho Department of Water Resources
1301 N. Orchard
Statehouse Mail
Boise, ID 83720-9000
☐ U.S. Mail ☐ Fax ☑ By hand ☐ Overnight

Ms. Darcy Thornborrow
1676 East 3800 North
Buhl, ID 83316
☑ U.S. Mail ☐ Fax ☐ Email ☐ Overnight

Christopher H. Meyer

MICROFILMED
JUL 26 2000

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098
Phone: (208) 327-7900 FAX: (208) 327-7866

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

July 2, 1999

RECEIVED
JUL 2 1999

Lee Halper
331 S 230 W
Jerome ID 83338

RE: APPLICATION FOR TRANSFER NO. 5401 IN THE NAME OF JEROME CHEESE COMPANY

Dear Mr. Halper:

I have enclosed an Order dated July 1, 1999, eight (8) subpoenas and eight (8) blank Affidavits of Service, per your request, for use in connection with the above referenced matter. Please be advised that you are responsible for serving the subpoenas to the parties involved.

Sincerely,

Julie L. Yarbrough

JULIE L. YARBROUGH, Administrative Assistant
Water Allocation Bureau

Enclosures

c: Service List
Allen Merritt - IDWR Southern

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JUL 2 6 2000

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR TRANSFER NO. 5401 IN THE NAME OF JEROME CHEESE COMPANY	)	**ORDER**

This matter is before the Idaho Department of Water Resources ("Department") as a result of a request to issue subpoenas in the above captioned matter.

On May 27, 1999, Lee Halper ("protestant") filed a Motion to Issue Subpoenas with the Department. On May 28, 1999, Jerome Cheese Company ("applicant") filed an objection to the motion.

On June 2, 1999, the Department issued an Order Denying Motion to Issue Subpoenas. Reasons for the denial described in the order were that "Most of the persons are elected officials who do not appear to be persons with information or knowledge that is relevant to the specific issues to be considered at the hearing" and that "Protestant has not described the purpose or nature of the testimony sought to be elicited from the potential witnesses."

On June 7, 1999, the Department asked the applicant "to specifically identify the documents, reports, studies and fact sheets sought from each party and a detailed reason for the request."

On June 14, 1999, the protestant filed a "Second Motion to Issue Subpoenas" with the Department.

The protestant has not provided suitable information to justify issuing subpoenas for all the potential witnesses and has not provided adequate information to "specifically identify the documents, reports, studies and fact sheets sought from each party and a detailed reason for the request."

ORDER

IT IS THEREFORE, HEREBY ORDERED as follows:

1. The Department declines to issue subpoenas to the following persons who are elected officials who have not been shown by the protestant to be

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JUL 26 2000

persons with information or knowledge that is relevant and admissible with respect to the issues to be considered at the hearing:

Stan Clark	- Governor's Office
Al Lance	- Attorney General - Boise
Laird Noh	- State Senator - Kimberly

2. The department declines to issue subpoenas to the following persons who duplicate agency representation and who have not been shown by the protestant to have substantially different interests or positions from other persons to whom the Department will issue subpoenas:

Sonny Buhider	- DEQ - Twin Falls
Janet Crockett	- IDWR- Boise
Mike Echeverri	- DEQ - Twin Falls
Mike Mitchell	- ISDA - Boise
Jim Stanton	- IDWR - Twin Falls
Donna West	- DEQ - Boise

3. The Department will issue subpoenas to the following persons:

Scott Bybee	- City of Jerome
Lewis Eilers	- Idaho Dairy Association
Brad Gilmore	- City of Twin Falls
Mike McMasters	- DEQ - Twin Falls
Ken Neely	- IDWR
Marv Patten	- ISDA - Boise
John Sandy	- State Senator - Hagerman
Marj Schmidt	- City of Jerome

Dated this 1st day of July, 1999.

L. GLEN SAXTON
Hearing Officer

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JUL 26 2000

CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that on this 2nd day of July, 1999, the above and foregoing document was served upon the following by placing a copy of the same in the United States Mail, postage prepaid and properly addressed to the following:

VIA U.S. MAIL

CHRISTOPHER H MEYER
MICHAEL C CREAMER
GIVENS PURSLEY LLP
277 N 6TH ST STE 200
PO BOX 2720
BOISE ID 83701-2720

LEE HALPER
331 S 230 W
JEROME ID 83338

BILL CHISHOLM
19073 E HWY 30
BUHL ID 83316

MICHAEL IHLER
2635A E 3100 N
TWIN FALLS ID 83301

DARCY THORNBORROW
1676 E 3800 N
BUHL ID 83616

Julie L. Yarbrough

JULIE L. YARBROUGH, Administrative Assistant
Water Allocation Bureau

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JUL 26 2000

BEFORE THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR TRANSFER NO. 5401 IN THE NAME OF JEROME CHEESE CO.	))))	**SUBPOENA**

THE STATE OF IDAHO TO: SCOTT BYBEE

YOU ARE HEREBY COMMANDED to appear before the Director of the Department of Water Resources at Obenchain Community Room, 264 Main Ave. South, Twin Falls, Idaho, on the 27th and 28th day of July, 1999, at 9:00 o'clock a.m. as a witness in the above entitled matter.

DATED this 1st day of July, 1999.

By order of the Director.

KARL J. DREHER, Director

MICROFILMED

JUL 26 2000

BEFORE THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR TRANSFER NO. 5401 IN THE NAME OF JEROME CHEESE CO.	))))	**SUBPOENA**

THE STATE OF IDAHO TO: LEWIS EILERS

YOU ARE HEREBY COMMANDED to appear before the Director of the Department of Water Resources at Obenchain Community Room, 264 Main Ave. South, Twin Falls, Idaho, on the 27th and 28th day of July, 1999, at 9:00 o'clock a.m. as a witness in the above entitled matter.

DATED this 1st day of July, 1999.

By order of the Director.

KARL J. DREHER, Director

MICROFILMED

JUL 26 2000

BEFORE THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION)
FOR TRANSFER NO. 5401 IN THE) **SUBPOENA**
NAME OF JEROME CHEESE CO.)
)

THE STATE OF IDAHO TO: BRAD GILMORE

YOU ARE HEREBY COMMANDED to appear before the Director of the Department of Water Resources at Obenchain Community Room, 264 Main Ave. South, Twin Falls, Idaho, on the 27th and 28th day of July, 1999, at 9:00 o'clock a.m. as a witness in the above entitled matter.

DATED this 1st day of July, 1999.

By order of the Director.

KARL J. DREHER, Director

MICROFILMED
JUL 26 2000

BEFORE THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR TRANSFER NO. 5401 IN THE NAME OF JEROME CHEESE CO.	))))	**SUBPOENA**

THE STATE OF IDAHO TO: MIKE MCMASTERS

YOU ARE HEREBY COMMANDED to appear before the Director of the Department of Water Resources at Obenchain Community Room, 264 Main Ave. South, Twin Falls, Idaho, on the 27th and 28th day of July, 1999, at 9:00 o'clock a.m. as a witness in the above entitled matter.

DATED this 1st day of July, 1999.

By order of the Director.

KARL J. DREHER, Director

MICROFILMED
JUL 26 2000

BEFORE THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR TRANSFER NO. 5401 IN THE NAME OF JEROME CHEESE CO.	))))	**SUBPOENA**

THE STATE OF IDAHO TO: KEN NEELY

YOU ARE HEREBY COMMANDED to appear before the Director of the Department of Water Resources at Obenchain Community Room, 264 Main Ave. South, Twin Falls, Idaho, on the 27th and 28th day of July, 1999, at 9:00 o'clock a.m. as a witness in the above entitled matter.

DATED this 1st day of July, 1999.

By order of the Director.

KARL J. DREHER, Director

MICROFILMED
JUL 26 2000

BEFORE THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR TRANSFER NO. 5401 IN THE NAME OF JEROME CHEESE CO.	))))	**SUBPOENA**

THE STATE OF IDAHO TO: MARV PATTEN

YOU ARE HEREBY COMMANDED to appear before the Director of the Department of Water Resources at Obenchain Community Room, 264 Main Ave. South, Twin Falls, Idaho, on the 27th and 28th day of July, 1999, at 9:00 o'clock a.m. as a witness in the above entitled matter.

DATED this 1st day of July, 1999.

By order of the Director.

KARL J. DREHER, Director

MICROFILMED
JUL 26 2000

BEFORE THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR TRANSFER NO. 5401 IN THE NAME OF JEROME CHEESE CO.	))))	**SUBPOENA**

THE STATE OF IDAHO TO: JOHN SANDY

YOU ARE HEREBY COMMANDED to appear before the Director of the Department of Water Resources at Obenchain Community Room, 264 Main Ave. South, Twin Falls, Idaho, on the 27th and 28th day of July, 1999, at 9:00 o'clock a.m. as a witness in the above entitled matter.

DATED this 1st day of July, 1999.

By order of the Director.

KARL J. DREHER, Director

MICROFILMED
JUL 26 2000

BEFORE THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR TRANSFER NO. 5401 IN THE NAME OF JEROME CHEESE CO.	))))	**SUBPOENA**

THE STATE OF IDAHO TO: MARJ SCHMIDT

YOU ARE HEREBY COMMANDED to appear before the Director of the Department of Water Resources at Obenchain.Community Room, 264 Main Ave. South, Twin Falls, Idaho, on the 27th and 28th day of July, 1999, at 9:00 o'clock a.m. as a witness in the above entitled matter.

DATED this 1st day of July, 1999.

By order of the Director.

KARL J. DREHER, Director

MICROFILMED
JUL 26 2000

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098
Phone: (208) 327-7900 FAX: (208) 327-7866

COPY

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

RECEIVED
JUL 07 1999
Department of Water Resources

July 2, 1999

RE: In the Matter of Petition to Intervene in Application for Transfer Nos. 5401 and 5436 in the name of Jerome Cheese Company

Dear Interested Party:

I have enclosed a copy of the Order Denying Petition to Intervene, issued in connection with above referenced transfer applications.

If you have any questions concerning the enclosed document, please contact me directly at (208)327-7953.

Sincerely,

Julie L. Yarbrough

JULIE L. YARBROUGH, Administrative Assistant
Water Allocation Bureau

Enclosure

c: IDWR - Southern

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JUL 26 2000

COPY

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF PETITION TO INTERVENE IN APPLICATION FOR TRANSFER NOS. 5401 AND 5436 IN THE NAME OF JEROME CHEESE COMPANY	**ORDER DENYING PETITION TO INTERVENE**

On June 11, 1999, the city of Jerome (petitioner) submitted to the Department of Water Resources (department) a Petition for Intervention in the above captioned matter pursuant to Rule of Procedure IDAPA 37.01.01350 (Rule 350).

On June 14, 1999, Jerome Cheese Company ("applicant") filed Applicant's Opposition of Jerome's Petition for Intervention.

On June 18, 1999, the petitioner filed an Amended Petition for Intervention (petition)

The department has reviewed the petition and department files and has determined the following:

1. The department advertised the applications on April 15 and April 22, 1999, with the protest period ending on May 3, 1999.

2. The petition is not timely filed and the petitioner has failed to show good cause for the untimely filing. The petitioner had ample opportunity to protest the applications and to become a party to the matter.

3. The petitioner has not shown that granting the petition will not broaden the issues to be heard in the scheduled hearing.

ORDER

IT IS THEREFORE HEREBY ORDERED that the petition of the city of Jerome requesting intervention into Application for Transfer Nos. 5401 and 5436 is **DENIED**.

Dated this 2nd day of July, 1999.

L. Glen Saxton

L. GLEN SAXTON
Hearing Officer

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JUL 26 2000

COPY

CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that on this 2nd day of July, 1999, the above and foregoing document was served upon the following by placing a copy of the same in the United States Mail, postage prepaid and properly addressed to the following:

VIA U.S. MAIL

ROBERT E WILLIAMS
FREDERICKSEN WILLIAMS
AND MESERVY
117 S ADAMS ST
JEROME ID 83338

CHRISTOPHER H MEYER
MICHAEL C CREAMER
GIVENS PURSLEY LLP
277 N 6TH ST STE 200
PO BOX 2720
BOISE ID 83701-2720

LEE HALPER
331 S 230 W
JEROME ID 83338

BILL CHISHOLM
19073 E HWY 30
BUHL ID 83316

MICHAEL IHLER
2635A E 3100 N
TWIN FALLS ID 83301

DARCY THORNBORROW
1676 E 3800 N
BUHL ID 83616

Julie L. Yarbrough

JULIE L. YARBROUGH, Administrative Assistant
Water Allocation Bureau

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JUL 26 2000

5022279 150
Adm 6/16/99

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JUN 16 1999
Department of Water Resources
Southern Region

ROBERT E. WILLIAMS
FREDERICKSEN, WILLIAMS & MESERVY
Attorneys at Law
117 South Adams Street
P. O. Box 168
Jerome, Idaho 83338
Telephone: (208) 324-2303
Idaho State Bar No. 1693
Attorney for Petitioner, City of Jerome

BEFORE THE IDAHO STATE DEPARTMENT OF WATER RESOURCES

In Re	Transfer Nos. 5401 and 5436
Application for Transfer of Jerome Cheese Company	**AMENDED PETITION FOR INTERVENTION**

The City of Jerome, an Idaho municipal corporation, through its attorney, Robert E. Williams, of the law firm of Fredericksen, Williams & Meservy, hereby petitions the Idaho Department of Water Resources for an order allowing it intervenor status in the above-referenced proceedings. In support of this Petition, the Petitioner shows that:

1. It is an Idaho municipal corporation with a mailing address of 152 East Avenue A, Jerome, Idaho 83338.

2. Petitioner has a direct and substantial interest in these proceedings as follows:

A. Jerome Cheese Company (referred to as "Applicant" in this Petition) conducts a cheese manufacturing operation on real property contiguous to an existing boundary of the City of Jerome (referred to as "Petitioner" in this Petition).

B. The Applicant's real property is presently the subject of an annexation ordinance under consideration by Petitioner.

C. The Applicant presently is connected to and utilizes both potable water and waste water treatment services provided by Petitioner.

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D. Although the applications are not absolutely clear, Petitioner believes the pending applications, if granted, will allow the Applicant to use, in whole or in part, water from a private source when water from a public source provided by the Petitioner is available.

E. The use of a private water supply may, depending on how it is utilized, affect the City of Jerome and its patrons adversely. Among the potential adverse affects may be "cross connections" with the public water system as now prohibited by local ordinance. The ability to provide adequate water for fire protection to Applicant's property may be compromised. Other problems may arise from Applicant using water from a private source while the remainder of Petitioner's patrons use water from the public source provided by Petitioner.

F. The Applicant may attempt to use the availability of water from a private source as a means to contest Petitioner's annexation proposal.

3. It may be that a full understanding of Applicant's plans will alleviate the concerns of Petitioner. However, Petitioner does not have that information at the present time and requests the opportunity of participating in the current proceedings so that the full effect of the applications on the City of Jerome may be ascertained.

4. Petitioner requests that the applications for transfer, if granted, contain appropriate conditions which would safeguard the legitimate interests of the City of Jerome and its existing water system. Without further information, Petitioner cannot now recommend what those conditions should be, but will provide recommended conditions when the full scope of Applicant's proposals are understood.

5. If the City's conditions for the granting of the applications cannot be met by Applicant, then Petitioner will request denial of the applications for transfer.

DATED this 15th day of June, 1999.

FREDERICKSEN, WILLIAMS & MESERVY

By: _____

ROBERT E. WILLIAMS
Attorney for Petitioner

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JUL 26 2000

CERTIFICATE OF SERVICE

I hereby certify that on this date I caused to be served the foregoing document upon all parties of record in this proceeding by mailing a copy thereof, properly addressed with postage prepaid, to:

Jerome Cheese Company
Attn: Rex Minchey
P.O. Box 485
Jerome, ID 83338

Christopher H. Meyer
Michael C. Creamer
Givens, Pursley, LLP
P.O. Box 2720
Boise, ID 83701-2720

Bill Chisolm
19073 East Highway 30
Buhl, ID 83316

Lee Halper
321 South 230 West
Jerome, ID 83338

Michael Ihler
2635A East 3100 North
Twin Falls, ID 83301

Darcy Thornborrow
1676 East 3800 North
Buhl, ID 83316

DATED: 6/15/99

ROBERT E. WILLIAMS

MICROFILMED

JUL 26 2000

Filing or Recording of Documents

Re: Jerome Cheese Factory (City of Jerome) Date 6/15/99 Our file no.: _____

The following documents are enclosed for:
- ☒ Filing with your office
- ☐ Recording with your office

Amended Petition for Intervention

- ☒ Please return file-marked copies to us
- ☐ Please enter date of filing and return this form to us

Date filed _____ By _____

- ☐ Charge our office for fees
- ☒ Check enclosed to cover fee: $ 50.00

RECEIVED
JUN 16 1999
Department of Water Resources
Southern Region

To: Allen Merritt
Dept. of Water Resources
1341 Fillmore St., Ste 200
Twin Falls, ID 83301

FREDERICKSEN, WILLIAMS & MESERVY
117 S. Adams • P.O. Box 168
Jerome, Idaho 83338
(208) 324-2303
Fax (208) 324-3135

MICROFILMED
JUL 26 2000

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098
Phone: (208) 327-7900 FAX: (208) 327-7866

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

RECEIVED
JUN 16 1999
Department of Water Resources
Southern Region

June 14, 1999

5436

RE: In the Matter of Application for Transfer No. ~~5401~~ in the name of Jerome Cheese Factory

Dear Interested Party:

I have enclosed a copy of the Order Authorizing Discovery, issued in connection with above referenced transfer application.

If you have any questions concerning the enclosed document, please contact me directly at (208)327-7953.

Sincerely,

Julie L. Yarbrough

JULIE L. YARBROUGH, Administrative Assistant
Water Allocation Bureau

Enclosure

c: Allen Merritt - IDWR Southern

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JUL 26 2000

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

RECEIVED
JUN 16 1999
Department of Water Resources
Southern Region

IN THE MATTER OF APPLICATION FOR TRANSFER NO. 5436 IN THE NAME OF JEROME CHEESE COMPANY

ORDER AUTHORIZING DISCOVERY

On June 9, 1999, Jerome Cheese Company ("applicant") filed Applicant's Motion to Dispense with Prehearing Conference and to Open Discovery in Transfer No. 5436.

The department hereby authorizes the parties to engage in discovery in connection with Application for Transfer No. 5436 commencing with the date of this order. The parties shall complete discovery seven (7) days prior to the date of the hearing which is scheduled to begin on July 27, 1999. Discovery shall be conducted pursuant to IDAPA Rules 37.01.01520-532 (Rules of Procedure 520 through 532).

Discovery shall be limited as follows:

1. Injury inquiries must be related to a water right(s), but not necessarily to a water right(s) owned or used by the protestants.

2. Local public interest inquiries must be limited to use of water for "the proposed use" which in this case is by a cheese factory. Dairies and their operation are not proper subject matter in Application for Transfer No. 5436.

The parties are directed to answer or otherwise respond to discovery in accordance with the department's Rules of Procedure and the Idaho Rules of Civil Procedure, as appropriate. The deadline for serving new written discovery for both Transfer Nos. 5401 and 5436 is July 1, 1999. Responses to discovery shall be mailed no later than July 19, 1999.

The applicant's motion to dispense with a prehearing conference in connection with Transfer No. 5436, other than any conference conducted by the hearing officer on the date of the hearing, is **GRANTED**.

In accordance with Rule 520, the scope of discovery shall be governed by Rule 26(b) of the Idaho Rules of Civil Procedure, unless otherwise provided by statute, rule or order of the Director.

Dated this 14th day of June, 1999.

L. GLEN SAXTON
Hearing Officer

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JUL 26 2000

CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that on this 14th day of June, 1999, the above and foregoing document was served upon the following by placing a copy of the same in the United States Mail, postage prepaid and properly addressed to the following:

VIA U.S. MAIL & FACSIMILE

CHRISTOPHER H MEYER
MICHAEL C CREAMER
GIVENS PURSLEY LLP
277 N 6TH ST STE 200
PO BOX 2720
BOISE ID 83701-2720

LEE HALPER
331 S 230 W
JEROME ID 83338

VIA U.S. MAIL

BILL CHISHOLM
19073 E HWY 30
BUHL ID 83316

MICHAEL IHLER
2635A E 3100 N
TWIN FALLS ID 83301

DARCY THORNBORROW
1676 E 3800 N
BUHL ID 83616

Julie L. Yarbrough

JULIE L. YARBROUGH, Administrative Assistant
Water Allocation Bureau

MICROFILMED
JUL 26 2000

Christopher H. Meyer, Esq.
Michael C. Creamer, Esq.
GIVENS PURSLEY LLP
277 North 6th Street, Suite 200
P.O. Box 2720
Boise, Idaho 83701-2720
Counsel for Applicant Jerome Cheese

Email: chm@givenspursley.com
Email: mcc@givenspursley.com
Office: 208-388-1200
Fax: 208-388-1300

RECEIVED
JUN 30 1999
Department of Water Resources

BEFORE THE
IDAHO DEPARTMENT OF WATER RESOURCES

In the Matter of Application For Transfer Nos. 5401(Water Right No. X36-07337E)

Jerome Cheese,
Applicant

William K. Chisholm,
Lee J. Halper,
Protestants

In the Matter of Application For Transfer Nos. 5436 (Water Right No. 35-08606)

Jerome Cheese,
Applicant

William K. Chisholm,
Lee J. Halper,
Michael Ihler,
Darcy Thornborrow,
Protestants

APPLICANT'S OPPOSITION TO CITY OF JEROME'S PETITION FOR INTERVENTION

COMES NOW Applicant Davisco Foods International, Inc., dba Jerome Cheese, by and through its attorneys, and respectfully submits this statement in opposition to the *Petition for Intervention* filed by the City of Jerome (the "City") in Water Right Transfer No. 5436.[1]

The Applicant opposes the *Petition for Intervention* for the following reasons:

1. The petition is untimely. Both transfer applications were properly noticed. On information and belief, the City had actual notice of the applications from the outset. The deadline for protests has expired. The City, although fully aware of the circumstances, made no effort to participate in this case by the deadline.

2. As the Department is aware, this case is already procedurally complex. There have been numerous maneuverings by the four Protestants in which it has been difficult to come to agreement on arrangements which would allow the case to move forward expeditiously. Consequently, this case already has proven unreasonably expensive to Jerome Cheese.

3. Following extended discussions, agreement was reached with respect to a consolidated hearing on Transfer Nos. 5401 and 5436 in July. As the

[1]The City has sought intervention only in Water Right Transfer No. 5436, and not Water Right Transfer 5401. However, in light of the informal consolidation of the two transfer applications, this statement in opposition is filed in both cases. In the event that the City later seeks to intervene in Water Right Transfer No. 5401, the Applicant requests that this statement in opposition be deemed to respond to such petition as well.

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Applicant has stated throughout this process, the speedy resolution of these proceedings is of vital importance, and was an express condition of the Applicant's agreement to forego an earlier scheduled hearing on Transfer No. 5401 in June.

4. Given the tight schedule between now and the hearing set for July, the parties will be hard pressed to complete discovery with the existing set of issues and players. Adding the City to the mix at this late date will result in the Applicant being less able to prepare adequately for the July hearing, and could even result in postponement of the hearing.

5. Despite the Applicant's opposition to the City's intervention in this matter, the Applicant is willing and prepared to address whatever concerns the City may have. We are already in the process of arranging a meeting with city officials for this purpose.

6. Indeed, the issues identified by the City it its *Petition for Intervention* have been the subject of discussion with regulatory agencies at the state and local level from the outset. Moreover, these issues have been fully addressed and resolved. Please see attached correspondence from (a) the Company's consultant and designer of the water supply system, Scott F. McClure, P.E. of McClure Engineering and (b) the Company's Maintenance Manager, J.

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JUL 2 6 2000

Rex Minchey.[2]

The reasons identified in the City's *Petition for Intervention* would be adequate to form a basis for a protest. They are inadequate, however, for a late intervention. As demonstrated above, the City's late intervention will substantially prejudice the Applicant. Moreover, the City has failed to offer any sound justification or excuse for its late intervention. Finally, the City has failed to show that it has substantial interests which cannot be addressed adequately outside the hearing process. For these reasons, the Applicant urges the Department to deny this *Petition for Intervention*, and any other which may subsequently be offered by the City.

Dated this 12th day of June, 1999.

GIVENS PURSLEY LLP

By _____
Christopher H. Meyer

Attorneys for Applicant
Jerome Cheese

[2]We have worked over the weekend to produce these letters in order to respond as quickly and effectively as possible. We trust these letters are sufficient to rebut the unsubstantiated allegations contained in the City's *Petition for Intervention*. However, if the Department desires sworn affidavits or other documentation, the Company is prepared to provide such.

MICROFILMED
JUL

CERTIFICATE OF SERVICE

I hereby certify that on June 14, 1999 I caused to be served a true and correct copy of the foregoing to each of the persons named below by the method indicated below each of their names.

Mr. William K. Chisholm
19073 E. Hwy. 30
Buhl, ID 83316
☑US Mail ☐Email ☐Fax ☐Hand ☐Overnight

Original to:
Mr. Karl J. Dreher
Director
Idaho Department of Water Resources
1301 N. Orchard St.
Statehouse Mail
Boise, ID 83720-9000
☐US Mail ☐Email ☐Fax ☑Hand ☐Overnight

Mr. Lee J. Halper
331 South 230 West
Jerome, ID 83338
☑US Mail ☐Email ☐Fax ☐Hand ☐Overnight

Mr. Michael Ihler
2635-A East 3100 North
Twin Falls, ID 83301
☑US Mail ☐Email ☐Fax ☐Hand ☐Overnight

Allen D. Merritt, P.E.
Southern Regional Manager
Idaho Department of Water Resources
1341 Fillmore St., Ste. 200
Twin Falls, ID 83301-3380
☑US Mail ☐Email ☐Fax ☐Hand ☐Overnight

Mr. L. Glen Saxton
Idaho Department of Water Resources
1301 N. Orchard
Statehouse Mail
Boise, ID 83720-9000
☐US Mail ☐Email ☐Fax ☑Hand ☐Overnight

Ms. Darcy Thornborrow
1676 East 3800 North
Buhl, ID 83316
☑US Mail ☐Email ☐Fax ☐Hand ☐Overnight

Robert E. Williams, Esq.
Fredericksen, Williams & Meservy
117 S. Adams Street
P.O. Box 168
Jerome, ID 83338
☑US Mail ☐Email ☐Fax ☐Hand ☐Overnight

Barbara Feasel

MICROFILMED
JUL 26 2000

EXHIBIT A

Letter from Scott F. McClure, P.E.

MICROFILMED
JUL 26 2000

June 12, 1999

Christopher H. Meyer
Givens Pursley, L. L. P
Suite 200, Park Place
Post Office Box 2720
Boise Idaho 83701-2720

McClure Engineering
MECHANICAL
STRUCTURAL
INDUSTRIAL

Dear Sir:

We receive a copy of the petition for intervention submitted by the City of Jerome. In that petition therere were concerns listed by the City of Jerome as potential adverse effects if the water rights were granted. Those concerns, and a response to those concerns, are as follows:

A. Potential for" cross connections" with a public water system as now prohibited by local ordinance.

Response: Design of water system piping has been closely coordinated with the City of Jerome and the Idaho State Department of Environmental Quality. Included in the design it is a reduced pressure back flow preventer of an approved manufacture and design. This device is intended to preclude the possibility of any fluid coming from the petitioners system back flowing into the city's water system, thus preventing any possible "cross connection".

B.. The ability to provide adequate water for fire protection to applicants property may be compromised

Response: Modification to site water system piping should in no way impair the capability of the city water system to provide adequate water for fire protection to the applicants property. Piping modifications shall be installed in such a manner as to impose no additional pressure drop in supply lines to the fire protection system.

Please contact us if you have any further questions or concerns.

Sincerely,

Scott F. McClure, P.E.

McClure Engineering Inc.

MICROFILMED
NOV 26 2000

VOC: 208-734-9015
ENGINEERING TODAY FOR A BETTER TOMORROW
507 Main Avenue West
Post Office Box 1404
Twin Falls, ID 83301-1404
FAX: 208-734-9016

EXHIBIT B

Letter from J. Rex Minchey

MICROFILMED
JUL 26 2000



Jerome Cheese Co.
P.O. Box 485
47 West 100 South
Jerome, Idaho 83338
(208) 324-8806
Fax: 208-324-8392

June 12, 1999

For Submission to
The Idaho Department of Water Resources

Re: Water Right Transfer No. 5436

I am writing in response to the Petition for Intervention filed by Jerome City. We are surprised by the City's action, which appears to single out Jerome Cheese for special treatment, perhaps in retaliation for the Company's resistance to the City's annexation effort. Needless to say, the ongoing discussions between the City and the Company regarding annexation have no bearing on this water right transfer. Moreover, the City's expressed concerns about Jerome Cheese developing a private water supply do not appear to be consistent with its treatment of other industrial operations in the vicinity. I note two examples of other companies who have developed private water supplies, without incurring the opposition of the City.

1. The Spears manufacturing facility (formerly Tupperware) owns and operates two water wells. The two wells are located within the boundaries of the City of Jerome.

2. The Western Potato Processors Company has a well and this company is also within the City of Jerome. I understand Jerome City is exploring the Possibility of purchasing this well!

Next, Jerome City raises the issue of cross connection. This is a non-issue. Cross connection is covered by the State of Idaho Regulations. We provided information about this in our response to Bill Chisholms First Set of interrogatories And Request For Production of Documents. Detailed regulations, with which the City has fully complied, require the provision of back flow prevention devices. These have been incorporated and installed to local

MICROFILMED
JUL 26 2000

Health Department requirements. We are prepared to cocument this, if desired by the Department, whether or not the City intervenes. The City's intervention would add nothing but complication and delay to an already overly-complex proceeding which is proving far more expensive than we ever anticipated.

As a further note here, at Jerome Cheese we have in service an alternative water system we use for cleaning and other uses that is Idaho State certified as potable water. (This is our Cow Water System.) We have insured that there is no way we can cross contaminate the City's water supply. The City is well aware of our efforts in this regard, and has raised no issue with this and these systems, which have been in operation for 6 + years.

Finally, let me address the City's comment in paragraph 2 sub paragraph E. suggesting that the ability to provide adequate water for fire protection to Applicant's property may be compromised. There is no basis for this. The City provides fire protection to Jerome Cheese now. Nothing should change. Our main fire lines are a totally separate system **as required by the city**. We pay a fee for this service.

In closing, let me say that Jerome Cheese is surprised by the City's action and wonders about the City's motivation. On the other hand, while we oppose this intervention, the company is committed to addressing the City's concerns. We very much share the City's interest in avoiding contamination of the water system, protection fire flows, and all other public health and safety concerns. We want to and intend to keep the lines of communication open, but we do not see any need or benefit from having to hash these issues out before the Department.

Thank you,

J Rex Minchey
Maintenance Manager
Jerome Cheese

MICROFILM

JUL 26 2000

ROBERT E. WILLIAMS
FREDERICKSEN, WILLIAMS & MESERVY
Attorneys at Law
117 South Adams Street
P. O. Box 168
Jerome, Idaho 83338
Telephone: (208) 324-2303
Idaho State Bar No. 1693
Attorney for Petitioner, City of Jerome

BEFORE THE IDAHO STATE DEPARTMENT OF WATER RESOURCES

In Re Application for Transfer of Jerome Cheese Company	Case No. 5436 Trust 5476 **PETITION FOR INTERVENTION**

The City of Jerome, an Idaho municipal corporation, through its attorney, Robert E. Williams, of the law firm of Fredericksen, Williams & Meservy, hereby petitions the Idaho Department of Water Resources for an order allowing it intervenor status in the above-referenced proceeding. In support of this Petition, the Petitioner shows that:

1. It is an Idaho municipal corporation with a mailing address of 152 East Avenue A, Jerome, Idaho 83338.

2 Petitioner has a direct and substantial interest in this proceeding as follows:

A Jerome Cheese Company (referred to as "Applicant" in this Petition) conducts a cheese manufacturing operation on real property contiguous to an existing boundary of the City of Jerome (referred to as "Petitioner" in this Petition).

B. The Applicant's real property is presently the subject of an annexation ordinance under consideration by Petitioner.

C. The Applicant presently is connected to and utilizes both potable water and waste water treatment services provided by Petitioner.

D. Although the Application is not absolutely clear, Petitioner believes the pending application, if granted, will allow the Applicant to use, in whole or in part, water from a private source when water from a public source provided by the Petitioner is available.

E. The use of a private water supply may, depending on how it is utilized, affect the City of Jerome and its patrons adversely. Among the potential adverse affects may be "cross connections" with the public water system as now prohibited by local ordinance. The ability to provide adequate water for fire protection to Applicant's property may be compromised. Other problems may arise from Applicant using water from a private source while the remainder of Petitioner's patrons use water from the public source provided by Petitioner.

F. The Applicant may attempt to use the availability of water from a private source as a means to contest Petitioner's annexation proposal.

3. It may be that a full understanding of Applicant's plans will alleviate the concerns of Petitioner. However, Petitioner does not have that information at the present time and requests the opportunity of participating in the current proceedings so that the full effect of the Application on the City of Jerome may be ascertained.

4. Petitioner requests that the application for transfer, if granted, contain appropriate conditions which would safeguard the legitimate interests of the City of Jerome and its existing water system. Without further information, Petitioner cannot now recommend what those conditions should be, but will provide recommended conditions when the full scope of Applicant's proposal is understood.

5. If the City's conditions for the granting of the application cannot be met by Applicant, then Petitioner will request denial of the application for transfer.

DATED this 6th day of June, 1999.

FREDERICKSEN, WILLIAMS & MESERVY

By: _____
ROBERT E. WILLIAMS
Attorney for Petitioner

MICROFILMED
JUL 26 2000

CERTIFICATE OF SERVICE

I hereby certify that on this date I caused to be served the foregoing document upon all parties of record in this proceeding by mailing a copy thereof, properly addressed with postage prepaid, to:

Jerome Cheese Company
Attn: Rex Minchey
P.O. Box 485
Jerome, ID 83338

Christopher H. Meyer
Michael C. Creamer
Givens, Pursley, LLP
P.O. Box 2720
Boise, ID 83701-2720

Bill Chisolm
19073 East Highway 30
Buhl, ID 83316

Lee Halper
321 South 230 West
Jerome, ID 83338

Michael Ihler
2635A East 3100 North
Twin Falls, ID 83301

Darcy Thornborrow
1676 East 3800 North
Buhl, ID 83316

DATED: 6/10/99

ROBERT E. WILLIAMS

MICROFILMED
JUN 26 2000

TRANSMISSION VERIFICATION REPORT

TIME : 06/11/1999 11:32
NAME : IDWR SOUTHERN REGION
FAX : 2087363037
TEL : 2087363033

DATE,TIME	06/11 11:30
FAX NO./NAME	IDWR SO
DURATION	00:01:34
PAGE(S)	03
RESULT	OK
MODE	STANDARD

MICROFILMED
JUL 26 2000

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098
Phone: (208) 327-7900 FAX: (208) 327-7866

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

June 10, 1999

Lee Halper
331 S 230 W
Jerome, ID 83338

RE: APPLICATIONS FOR TRANSFER NOS. 5401 AND 5436 IN THE NAME OF JEROME CHEESE CO.

Dear Mr Halper:

Yesterday, Norman Young of this office hand delivered three (3) E-Mail messages to me which you had sent to him (all on June 9, 1999) in connection with the above referenced matter. Mr. Young is not involved in this contested matter and it is most inappropriate for you to send E-mail correspondence to him about this matter. Sending E-mail messages to him could be construed as an ex-parte contact. Please immediately cease and desist this practice.

In connection with service documents and letters in this matter, I am not required to treat E-mail messages sent to me as official documents or correspondence. As a practical matter, all parties to a contested matter likely do not have the capability of receiving E-mail and hence are placed at a distinct disadvantage in not being able to receive information instantaneously as can some of the parties

Again, as I advised you in my June 7, 1999 letter, an electronic transmission by E-mail is not the same as an electronic transmission by FAX which is sent in compliance with IDAPA 37.01 01300 (Procedure Rule 300).

Thank you for your prompt compliance with requests in this letter.

Sincerely,

L. Glen Saxton

L GLEN SAXTON
Hearing Officer

c Chris Meyer
Michael Ihler
Bill Chisholm
Darcy Thornborrow
Allen Merritt
Norman C Young

Christopher H. Meyer, Esq.
Michael C. Creamer, Esq.
GIVENS PURSLEY LLP
277 North 6th Street, Suite 200
P.O. Box 2720
Boise, Idaho 83701-2720
Counsel for Applicant Jerome Cheese

Email: chm@givenspursley.com
Email: mcc@givenspursley.com
Office: 208-388-1200
Fax: 208-388-1300

BEFORE THE
IDAHO DEPARTMENT OF WATER RESOURCES

In the Matter of Application For Transfer Nos. 5401(Water Right No. X36-07337E)

Jerome Cheese,
Applicant

William K. Chisholm,
Lee J. Halper,
Protestants

In the Matter of Application For Transfer Nos. 5436 (Water Right No. 35-08606)

Jerome Cheese,
Applicant

William K. Chisholm,
Lee J. Halper,
Michael Ihler,
Darcy Thornborrow,
Protestants

APPLICANT'S MOTION TO DISPENSE WITH PREHEARING CONFERENCE AND TO OPEN DISCOVERY IN TRANSFER NO. 5436

COMES NOW Applicant Davisco Foods International, Inc., dba Jerome Cheese, by and through its attorneys, and respectfully submits this motion to dispense with prehearing conference and to open discovery in Transfer No. 5436.

The Applicant has sought to engage the Protestants in a stipulation to this effect. See undersigned counsel's letter to Protestants of June 4, 1999, a copy of which is attached hereto as Exhibit A. None of the Protestants has agreed to the stipulation. None of the Protestants has offered any alternative to the stipulation.

Consequently, the Applicant urges the Department of Water Resources to issue appropriate orders to move Transfer No. 5436 forward so that it may be heard as scheduled on July 27 and 28, 1999. The Applicant offers the schedule suggested in its attached letter of June 4, 1999 as a reasonable framework for moving forward. In the event the Department is unwilling to dispense with the Prehearing Conference, the Applicant suggests, as an alternative, that it be conducted at the earliest possible time via telephone conference.

Dated this 9th day of June, 1999.

GIVENS PURSLEY LLP

By _____
Christopher H. Meyer

Attorneys for Applicant
Jerome Cheese

MICROFILMED
JUL 26 2000

CERTIFICATE OF SERVICE

I hereby certify that on June 9, 1999 I caused to be served a true and correct copy of the foregoing to each of the persons named below by the method indicated below each of their names.

Mr. William K. Chisholm
19073 E. Hwy. 30
Buhl, ID 83316
☑ U.S. Mail ☐ Fax ☑ Email ☐ Overnight

Original to
Mr. Karl J. Dreher
Director
Idaho Department of Water Resources
1301 N. Orchard St.
Statehouse Mail
Boise, ID 83720-9000
☐ U.S. Mail ☐ Fax ☑ By hand ☐ Overnight

Mr. Lee J. Halper
331 South 230 West
Jerome, ID 83338
☑ U.S. Mail ☐ Fax ☑ Email ☐ Overnight

Mr. Michael Ihler
2635-A East 3100 North
Twin Falls, ID 83301
☑ U.S. Mail ☐ Fax ☑ Email ☐ Overnight

Allen D. Merritt, P.E.
Southern Regional Manager
Idaho Department of Water Resources
1341 Fillmore St., Ste. 200
Twin Falls, ID 83301-3380
☑ U.S. Mail ☐ Fax ☑ Email ☐ Overnight

Mr. L. Glen Saxton
Idaho Department of Water Resources
1301 N. Orchard
Statehouse Mail
Boise, ID 83720-9000
☐ U.S. Mail ☐ Fax ☑ By hand ☐ Overnight

Ms. Darcy Thornborrow
1676 East 3800 North
Buhl, ID 83316
☑ U.S. Mail ☐ Fax ☑ Email ☐ Overnight

Christopher H. Meyer

MICROFILMED
JUL 26 2000

EXHIBIT A

Letter of June 4, 1999

MICROFILMED
JUL 26 2000

FILE COPY

GIVENS PURSLEY LLP

LAW OFFICES
277 North 6th Street, Suite 200
PO Box 2720, Boise, Idaho 83701
TELEPHONE 208 388-1200
FACSIMILE 208 388-1300

DIRECT DIAL: 208 388-1236
EMAIL: chm@givenspursley.com

Gary G Allen
Christopher J. Beeson
Michael C. Creamer
Thomas E. Dvorak
Roy Lewis Eigsren
Jeffrey C. Fereday
L. W. Grant III
Richard W Jankowski
Karl T. Klein
David R Lombard

Kimberly D Maloney
Kenneth R McClure
Cynthia A. Melillo
Christopher H. Meyer
L. Edward Miller
Patrick J Miller
Judson B. Montgomery
Angela K. Nelson
W Hugh O'Riordan
Kenneth L. Pursley

Conley Ward
Stephanie C. Westermeier
Robert B. White

Raymond D Givens
James A. McClure
OF COUNSEL

Via Facsimile

June 4, 1999

Mr. William K. Chisholm
19073 E. Hwy. 30
Buhl, ID 83316

Mr. Lee J. Halper
331 South 230 West
Jerome, ID 83338

Mr. Michael Ihler
2635-A East 3100 North
Twin Falls, ID 83301

Ms. Darcy Thornborrow
1676 East 3800 North
Buhl, ID 83316

Re: Jerome Cheese Company
Water Right Transfers Nos. 5401 & 5436
Our File No. 5472-1

Dear Mr. Chisholm, Mr. Halper, Mr. Ihler and Ms. Thornborrow:

Thank you for your cooperation in rescheduling the June 8 hearing, and setting the consolidated hearing for July 27 and 28.

I just spoke with Glen Saxton regarding procedures for where we go from here. I told him that I believed we had an agreement among all of the parties to forego the prehearing conference on Transfer No. 5436, and move directly to the hearing set for July 27 and 28. Mr. Saxton asked me to confirm that via written stipulation.

Mr. Saxton also suggested that we enter into a stipulation regarding the initiation of discovery.

If this is acceptable to you, please sign below and return this to me. Faxed copies are fine. My signature on this letter indicates my acceptance of the agreement outlined below.

MICROFILMED
JUL 26 2000

Sincerely,

Christopher H. Meyer
For Jerome Cheese Company

CHM:baf

AGREEMENT

I have read the letter above, and agree to the following:

(1) I waive my right to a prehearing conference in Transfer No. 5436. I understand that we will proceed instead directly to the hearing set for July 27 and 28, 1999. I understand that no evidence is taken at the prehearing conference, and that I may present my full case, as permitted by the Department, at the July 27 and 28 hearing.

(2) I agree that all parties should be allowed to begin discovery in Transfer No. 5436 at any time. Discovery in Transfer No. 5401 is already underway and will continue. In order to complete discovery in both cases roughly seven days prior to the hearing, I agree to a deadline on serving new written discovery for both Transfer No. 5401 and No. 5436 of July 1, 1999 (date of mailing or other delivery). This will allow 15 days for responses, plus 3 days mailing, with responses due no later than July 19, 1999 (mailing date). All other discovery (e.g., depositions) shall be completed by close of business on July 20, 1999.

Dated:_____ Sign here:_____

Print name here:_____

MICROFILMED
JUL 26 2000

Christopher H. Meyer, Esq.
Michael C. Creamer, Esq.
GIVENS PURSLEY LLP
277 North 6th Street, Suite 200
P.O. Box 2720
Boise, Idaho 83701-2720
Counsel for Applicant Jerome Cheese Company

Email: chm@givenspursley.com
Email: mcc@givenspursley.com
Office: 208-388-1200
Fax: 208-388-1300

RECEIVED
JUN 14
Department of Water Resources

BEFORE THE
IDAHO DEPARTMENT OF WATER RESOURCES

In the Matter of Application For Transfer No. 5401 (Water Right No. X36-07337E) Jerome Cheese, Applicant William K. Chisholm, Lee J. Halper, Protestants	**APPLICANT JEROME CHEESE'S THIRD SUPPLEMENTAL DISCLOSURE OF WITNESSES**

COMES NOW Applicant Jerome Cheese by and through its attorneys, pursuant to the Department of Water Resource's order of May 7, 1999, and provides the following supplemental disclosure of witnesses:

I. WITNESSES

The Applicant may call any of the following persons as expert and/or fact witnesses:

Mr. Lewis Eilers
Executive Director
Idaho Dairymen's Association
890 Shoshone St. East
Twin Falls, ID 83301

Dated this 8th day of June, 1999.

GIVENS PURSLEY LLP

By _____
Christopher H. Meyer

Attorneys for Applicant
Jerome Cheese Company

MICROFILMED
JUL 26 2000

CERTIFICATE OF SERVICE

I hereby certify that on June 8, 1999 I caused to be served a true and correct copy of the foregoing to each of the persons named below by the method indicated below each of their names.

Mr. William K. Chisholm
19073 E. Hwy. 30
Buhl, ID 83316
email: chisholm@rmci.net
☑ U.S. Mail ☐ Fax ☐ By hand ☐ Overnight
☐ Email

Original to:
Mr. Karl J. Dreher
Director
Idaho Department of Water Resources
1301 N. Orchard St.
Statehouse Mail
Boise, ID 83720-9000
☑ U.S. Mail ☐ Fax ☐ By hand ☐ Overnight

Mr. Lee J. Halper
331 South 230 West
Jerome, ID 83338
email: slvrchst@magiclink.com
☑ U.S. Mail ☐ Fax ☐ By hand ☐ Overnight
☐ Email

Allen D. Merritt, P.E.
Southern Regional Manager
Idaho Department of Water Resources
1341 Fillmore St., Ste. 200
Twin Falls, ID 83301-3380
☑ U.S. Mail ☐ Fax ☐ By hand ☐ Overnight

Mr. L. Glen Saxton
Idaho Department of Water Resources
1301 N. Orchard
Statehouse Mail
Boise, ID 83720-9000
☑ U.S. Mail ☐ Fax ☐ By hand ☐ Overnight

Christopher H. Meyer

MICROFILMED
JUL 26 2000

Christopher H. Meyer, Esq.
Michael C. Creamer, Esq.
GIVENS PURSLEY LLP
277 North 6th Street, Suite 200
P.O. Box 2720
Boise, Idaho 83701-2720
Counsel for Applicant Jerome Cheese

Email: chm@givenspursley.com
Email: mcc@givenspursley.com
Office: 208-388-1200
Fax: 208-388-1300

RECEIVED
JUN 14 1999
Department of Water Resources

BEFORE THE
IDAHO DEPARTMENT OF WATER RESOURCES

In the Matter of Application For Transfer Nos. 5401(Water Right No. X36-07337E)

Jerome Cheese,
Applicant

William K. Chisholm,
Lee J. Halper,
Protestants

In the Matter of Application For Transfer Nos. 5436 (Water Right No. 35-08606)

Jerome Cheese,
Applicant

William K. Chisholm,
Lee J. Halper,
Michael Ihler,
Darcy Thornborrow,
Protestants

APPLICANT'S MOTION IN LIMINE AND MOTION FOR PROTECTIVE ORDER TO LIMIT SCOPE OF HEARING

MICROFILMED

COMES NOW Applicant Davisco Foods International, Inc., dba Jerome Cheese, by and through its attorneys, and respectfully submits this motion in limine and motion for protective order to limit the scope of the upcoming hearing on Water Right Transfer Nos. 5401 and 5436.

First, this motion urges the Idaho Department of Water Resources ("IDWR" or the "Department") to bar the introduction of two types of evidence: (1) evidence regarding injury or enlargement offered by any Protestant who does not adequately and plausibly plead ownership of a specific water right which will be injured thereby, and (2) evidence offered pursuant to the "local public interest" test in Idaho Code § 43-222 which does not relate directly to the water right transfer at issue.

Second, this motion seeks a protective order from the Department protecting the Applicant from responding to discovery which is beyond the scope of the upcoming hearing, that is, discovery addressing items (1) and (2) in the previous paragraph.

This motion is supported by *Applicant's Memorandum in Support of Motion in Limine and Motion for Protective Order* filed herewith.

Dated this 9th day of June, 1999.

GIVENS PURSLEY LLP

By _____
Christopher H. Meyer

Attorneys for Applicant
Jerome Cheese

CERTIFICATE OF SERVICE

I hereby certify that on June 9, 1999 I caused to be served a true and correct copy of the foregoing to each of the persons named below by the method indicated below each of their names.

Mr. William K. Chisholm
19073 E. Hwy. 30
Buhl, ID 83316
☑US Mail ☐Email ☐Fax ☐Hand ☐Overnight

Original to
Mr. Karl J. Dreher
Director
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Mr. Lee J. Halper
331 South 230 West
Jerome, ID 83338
☑US Mail ☐Email ☐Fax ☐Hand ☐Overnight

Mr. Michael Ihler
2635-A East 3100 North
Twin Falls, ID 83301
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Allen D. Merritt, P.E.
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Mr. L. Glen Saxton
Idaho Department of Water Resources
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Ms. Darcy Thornborrow
1676 East 3800 North
Buhl, ID 83316
☑US Mail ☐Email ☐Fax ☐Hand ☐Overnight

Christopher H. Meyer

MICROFILMED
JUL 26 2000

RECEIVED

Christopher H. Meyer, Esq.
Michael C. Creamer, Esq.
GIVENS PURSLEY LLP
277 North 6th Street, Suite 200
P.O. Box 2720
Boise, Idaho 83701-2720
Counsel for Applicant Jerome Cheese

Email: chm@givenspursley.com
Email: mcc@givenspursley.com
Office: 208-388-1200
Fax: 208-388-1300

BEFORE THE
IDAHO DEPARTMENT OF WATER RESOURCES

In the Matter of Application For Transfer Nos. 5401(Water Right No. X36-07337E)

Jerome Cheese,
Applicant

William K. Chisholm,
Lee J. Halper,
Protestants

In the Matter of Application For Transfer Nos. 5436 (Water Right No. 35-08606)

Jerome Cheese,
Applicant

William K. Chisholm,
Lee J. Halper,
Michael Ihler,
Darcy Thornborrow,
Protestants

APPLICANT JEROME CHEESE'S SUBMISSION OF WITHHELD DOCUMENTS

Comes now Applicant Davisco Foods International, Inc., dba Jerome Cheese, by and through its undersigned counsel, and submits for in camera inspection documents numbered 17 through 34 which have been withheld by the Applicant in response to discovery requests by Protestants

Dated this 11th day of June, 1999.

GIVENS PURSLEY LLP

By _____
Christopher H. Meyer

Attorneys for Applicant
Jerome Cheese

MICROFILMED
JUL 26 2000

LIST OF DOCUMENTS SUBJECT TO IN CAMERA INSPECTION[1]

17. Jerome Cheese—Milk Suppliers List
18. Jerome Cheese — Vendor List
19. Letter from DEQ to Lee Glaesemann (May 18, 1999)
20. Letter from DEQ to Chuck Brockway (April 27, 1999)
21. Letter from DEQ to Chuck Brockway (May 18, 1999)
22. Drinking Water Monitoring Requirements
23. Compliance Monitoring Requirements Under the Standardized Monitoring Framework
24. Jerome Cheese — Employee List
25. Letter from DEQ to Chuck Brockway to DEQ (May 6, 1999)
26. Engineering drawings
27. Letter from DEQ to Chuck Brockway (May 18, 1999)
28. Well construction design checklist
29. Letter from DEQ to Lee Glaesemann (May 6, 1999)
30. City of Jerome—Notice (June 3, 1997)
31. City of Jerome—Industrial Waste Discharge Permit (Sept. 15, 1995)
32. Letter from DEQ to Nikki Arnold (March 6, 1995)
33. City of Jerome—Bill No. 272, Ordinance No. 799
34. City of Jerome—Agreement (April 3, 1998)

[1]Withheld pending resolution of Applicant's Motion in Limine and Motion for Protective Order.

MICRO FILMED
JUL 26 2000

CERTIFICATE OF SERVICE

I hereby certify that on June 11th, 1999 I caused to be served a true and correct copy of the foregoing to each of the persons named below by the method indicated below each of their names.

Mr. William K. Chisholm
19073 E. Hwy. 30
Buhl, ID 83316
☑ US Mail ☐ Email ☐ Fax ☐ Hand ☐ Overnight

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Director
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1301 N. Orchard St.
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☑ US Mail ☐ Email ☐ Fax ☐ Hand ☐ Overnight

Mr. Lee J. Halper
331 South 230 West
Jerome, ID 83338
☑ US Mail ☐ Email ☐ Fax ☐ Hand ☐ Overnight

Mr. Michael Ihler
2635-A East 3100 North
Twin Falls, ID 83301
☑ US Mail ☐ Email ☐ Fax ☐ Hand ☐ Overnight

Allen D. Merritt, P.E.
Southern Regional Manager
Idaho Department of Water Resources
1341 Fillmore St., Ste. 200
Twin Falls, ID 83301-3380
☑ US Mail ☐ Email ☐ Fax ☐ Hand ☐ Overnight

Mr. L. Glen Saxton
Idaho Department of Water Resources
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BEFORE THE
IDAHO DEPARTMENT OF WATER RESOURCES

In the Matter of Application For Transfer Nos. 5401(Water Right No. X36-07337E)

Jerome Cheese,
Applicant

William K. Chisholm,
Lee J. Halper,
Protestants

In the Matter of Application For Transfer Nos. 5436 (Water Right No. 35-08606)

Jerome Cheese,
Applicant

William K. Chisholm,
Lee J. Halper,
Michael Ihler,
Darcy Thornborrow,
Protestants

APPLICANT JEROME CHEESE'S MEMORANDUM IN SUPPORT OF MOTION IN LIMINE AND MOTION FOR PROTECTIVE ORDER

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Department of Water Resources

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INTRODUCTION

This Memorandum of Points and Authorities is filed by Applicant Davisco Foods International, Inc., dba Jerome Cheese, in support of its motion in limine and motion for protective order to limit the scope of discovery and of the upcoming hearing on Water Right Transfer Nos. 5401 and 5436.

The Applicant's motion urges the Idaho Department of Water Resources ("IDWR" or the "Department") to bar the introduction of two types of evidence: (1) evidence regarding injury or enlargement offered by any Protestant who does not document ownership of a water right which will be injured thereby, and (2) evidence offered pursuant to the "local public interest" test in Idaho Code § 43-222 which does not relate directly to the water right transfer at issue.

The motion also seeks a protective order to protect the Applicant from discovery on issues which are beyond the proper scope of this hearing. Copies of Applicant's responses to discovery requests by Protestants Chisholm and Halper are attached hereto as Exhibits A and B, respectively. These identify numerous instances in which Applicant seeks protection from the Department. We will not include copies of documents produced to the Protestants. However, documents which have been withheld from the Protestants pursuant to Applicant's motion for protective order are being submitted to the Department under separate cover on a confidential basis for *in camera* inspection.

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ARGUMENT

I. THE PROTESTANTS OWN NO WATER RIGHTS AND THEREFORE LACK STANDING TO ALLEGE INJURY OR ENLARGEMENT.

A. None of the Protestants has asserted ownership of a water right which could be injured by these transfers.

The first part of the motion is addressed to the issue of standing to raise injury and enlargement issues.

It appears that none of the four Protestants own any water rights whatsoever,[1]

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[1]None of the four Protestants have asserted ownership of water rights in their protests.

Protestants Chisholm and Halper each responded to discovery requests requiring them to identify all water rights they own. Neither identified a water right.

Protestant Chisholm claimed an ownership interest in all the water of the state. The law of standing is clear that an interest which cannot be distinguished from the public at large cannot be the basis for legal standing. *Miles v. Idaho Power Co.*, 116 Idaho 635, 778 P.2d 757 (1989).

Protestant Halper claims ownership of a few shares in the North Side Canal Company. First, the Hearing Officer may take official notice of the fact that this canal company's senior water right, with an upstream point of diversion, could not possibly be adversely affected by the proposed transfer. He might as well assert ownership of a water right in Coeur d'Alene. Second, owning shares in a Carey Act company is not the same thing as owning the water right. *Aberdeen-Springfield Canal Co. v. Peiper*, No. 23912, slip op. (Idaho May 26, 1999). Indeed, the canal company, which holds legal title to the water right, has not seen fit to protest these transfers. Third, Protestant Halper has claimed an unspecified "interest" in "1 ½ domestic wells." Notably, a well is not a water right; the Protestant has claimed no ownership of a water right. Also, an unidentified "interest" (e.g., an agreement to use a neighbor's well) does not equate to ownership. Moreover, even if he did own a domestic water right, domestic rights are accorded special protection from injury. Idaho Code 42-§ 227; *Parker v. Wallentine*, 103 Idaho 506, 650 P.2d 648 (1982). Fourth, Protestant Halper has failed to plead that he owns a junior water right. Ordinarily, only junior water rights are subject to injury analysis in transfer cases. A. Lynne Krogh-Hampe, *Injury and Enlargement in Idaho Water Rights Transfers*, 27 Idaho L. Rev. 249, 254 (1990) ("The injury or enlargement analysis is generally not concerned with injury to senior appropriators because seniors are protected

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much less a junior water right positioned so that it arguably could be affected by the proposed transfer.[2]

Consequently, any evidence that they might seek to offer regarding injury or enlargement[3] would be offered on behalf of others, not themselves. The law of standing

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by their priorities."); *Washington State Sugar Co. v Goodrich*, 27 Idaho 26, 147 P. 1073 (1915) (Holding that a person may amend an application (claim) for a water right, but not to the detriment of others who have filed subsequently). To be sure, there may be unique circumstances under which a senior water right holder could be injured by a change by a junior, but this must be plead. No such potential injury has been claimed by Protestant Halper. Consequently, he and the other Protestants lack standing to pursue this issue.

[2]To the extent that the Protestants have created doubt, uncertainty, or ambiguity regarding this issue of whether they own water rights, they must not be rewarded for their vague and unresponsive pleading by affording them standing to which they would not otherwise be entitled. Standing is not created by a void. It must be asserted, with a proper foundation, by the party seeking standing. Moreover, it must be asserted at the outset. *Lujan v. National Wildlife Federation*, 497 U.S. 871 (1990) (affidavits documenting standing were insufficiently precise; standing denied). This is not an issue to be sorted out, at leisure, after all the evidence is in. The question of standing must be addressed now, prior to putting the parties through the costly hearing process.

[3]The thrust of "enlargement" is to ensure that the use of water does not increase. This can arise where an existing use is increased or intensified in some way, or where new uses are added onto existing uses. The Applicant takes the position that enlargement is not an issue in a transfer application in which the prior uses are ended and entirely new uses are substituted. This is so because there is no way to compare the "size" of two entirely different uses. (You can compare the size of their diversions, but that goes to injury, not to enlargement.) E.g., It is obvious that 100 acres of irrigation is bigger (an enlargement) than 50 acres of irrigation, even if both use only 1 cfs of diversion. But it is pointless to discuss which is bigger: 50 acres of irrigation using 1 cfs or washing of 5 rooms of industrial equipment using 1 cfs. Enlargement is simply meaningless in this context.

On the other hand, if the Department takes the position that enlargement is nonetheless an issue which must be addressed in this transfer, then the evidence which speaks to enlargement will overlap entirely with the evidence on injury. Thus, in any event, the "enlargement" issue adds nothing to this case, and the Protestants who lack

is well developed in Idaho, and is consistent with the rule throughout the nation. Litigants, including administrative litigants, may not press claims which are not their own. Our judicial and regulatory systems are burdened as they are, without being subjected to the hypothetical claims of "concerned" citizens who seek to correct perceived wrongs which have no personal bearing on them. Aside from the burden on the Department, persons seeking to avail themselves of water rights should not be subjected to the potentially enormous expense and uncertainty of defending claims brought by the uninjured.

Having failed to establish ownership of any water right, much less a junior water right which has even the potential to be adversely affected by the proposed transfers,[4] the Protestants have no standing to raise issues with respect to injury and enlargement.

B. Idaho courts have long limited standing to those who suffer potential injury.

It has long been the law in Idaho that those challenging transfers of water rights must have standing to do so. In *Hall v. Blackman*, 22 Idaho 539, 126 P. 1045 (1912), the Idaho Supreme Court denied standing to Hall in an action to enjoin an allegedly improper transfer of a water right by Blackman. The court found that because the

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standing to argue injury would also lack standing to argue enlargement.

[4]If any of the Protestants contest these assertions, they should do so not by unsworn, general denials or legal argument in a responsive pleading. Rather, they are required to supply specific sworn affidavits which are sufficient and complete to lay a proper foundation for their participation. *Lujan v. National Wildlife Federation*, 497 U.S. 871 (1990) (precise affidavits required).

allegedly improper change occurred "prior to the appropriation made by appellant, he could not have been injured thereby, for the very reason that he had no rights on said creek at the time said change was made." *Hall*, 22 Idaho at 542.

This case is now cited as black letter law in Idaho. A. Lynne Krogh-Hampe, *Injury and Enlargement in Idaho Water Rights Transfers*, 27 Idaho L. Rev. 249, 254 (1990).

If a water right holder whose water right is junior to the change cannot challenge the change, how can it be that one who owns no water right at all is free to challenge a change on "injury" grounds? This is implausible.

This conclusion is strongly reinforced by the Idaho Supreme Court's recent decision in *Idaho Conservation League, Inc. v. State*, 128 Idaho 155, 911 P.2d 748 (1995). In this case, four conservation groups sought to intervene in the Snake River Basin Adjudication ("SRBA") to challenge claims based on the former "presumption" and "accomplished transfer" statutes (Idaho Code §§ 42-1416 and 42-1416A, respectively). The district court allowed them in for the limited purpose of addressing the "local public interest" which, at the time, was one of the criteria specified in the statutes. By the time of the appeal, however, the statutes had been repealed and replaced with a more limited version (Idaho Code 42-1425) which dropped the "local public interest" criterion.

The Idaho Supreme Court ruled that the change in the statute "eliminates the

grounds upon which the conservation groups were granted limited intervention. Consequently, the SRBA court's order granting the motion to intervene is vacated." *Idaho Conservation League, Inc.*, 991 P.2d at 750. The court expressly noted that the revised statute continued to call for an evaluation of injury and enlargement. *Id.* This, however, was not enough to keep the conservation groups in the case. The court did not even offer an explanation. Perhaps it was self-evident: The conservation groups do not own water rights. Consequently, they have no standing to tie up the SRBA with challenges based on injury to other people's rights. Their only valid ticket for admission to challenge a water right was the local public interest. When the legislature voided that ticket, the conservation groups had no standing to litigate the remaining injury and enlargement issues.

The court's longstanding reluctance to allow non-water right holders to litigate injury and enlargement issues is nothing exceptional or unique to water law. It follows easily from general, well-established principles of the law of standing.[5]

For instance, in *Boundary Backpackers v. Boundary County*, 128 Idaho 371, 913 P.2d 1141 (Idaho 1996), three environmental groups and eighteen individuals challenged a county ordinance which purported to dictate land use decisions to state and federal land

[5]These principles, by the way, apply not just to judicial forums but apply also and with equal force to contested administrative proceedings such as this one. Kenneth Culp Davis & Richard J. Pierce, Jr., 3 *Administrative Law Treatise*, § 16.10 at 65 (1994) ("court decisions on the right to intervene and to participate in agency proceedings other than informal rulemakings apply the reasoning of the Supreme Court decisions on standing to obtain judicial review of agency decisions with virtually identical results.")

management agencies. The court found standing, but only with respect to one individual. He was an outfitter and guide whose affidavit demonstrated that the legislation posed a threat to his livelihood.

Our Supreme Court is consistent in its insistence that the harm relate personally to the individual pressing the allegation. As the Idaho Supreme Court said in the famous "Swan Falls" case:

> The essence of the standing inquiry is whether the party seeking to invoke the court's jurisdiction has "alleged such a personal stake in the outcome of the controversy as to assure the concrete adversariness which sharpens the presentation upon which the court so depends for illumination of difficult constitutional questions." As refined by subsequent reformation, this requirement of "personal stake" has come to be understood to require not only a "distinct palpable injury" to the plaintiff, but also a "fairly traceable" causal connection between the claimed injury and the challenged conduct."

Miles v. Idaho Power Co , 116 Idaho 635, 641, 778 P.2d 757, 763 (1989) (quoting the U.S. Supreme Court in *Duke Power Co. v. Carolina Environmental Study Group*, 438 U.S. 59 (1978)) (same language quoted again in *Idaho Branch, Inc. v. Nampa Highway Dist. No. 1*, 123 Idaho 237, 846 P.2d 239 (Idaho App. 1993) (emphasis supplied)).

Thus, as both our Supreme Court and the Court of Appeals have repeated, the "injury" must be to the party seeking to litigate the claim. No case may be based on injury to non-litigants. It is that simple.

Here is another formulation by our Supreme Court:

> Standing is that aspect of justiciability focusing on the

> party seeking a forum rather than on the issues he wants adjudicated. And the crucial inquiry in its determination is "whether the plaintiff has 'alleged such a personal stake in the outcome of the controversy' as to warrant *his* invocation of [the court's] jurisdiction and to justify exercise of the court's remedial powers on his behalf."

Bear Lake Education Assn. v. Board of Trustees of Bear Lake School Dist. No. 33, 116 Idaho 443, 447-48, 776 P.2d 452, 456-57 (1989) (quoting *Bentel v. County of Bannock*, 104 Idaho 130, 656 P.2d 1383 (1983)). The emphasis in the case is the supreme court's. Again, the court has made clear that the personal stake must be the Protestants'. Injury—whether real or imagined—to someone else is insufficient to confer standing. Likewise, uninjured parties have no standing to simply "put the Applicant to his proof" just for the sport of it.

The requirement of standing is not just a question of convenience, which may be imposed or dispensed with at the discretion of the Hearing Officer. The law of standing is grounded in the Constitution, which fixes real, jurisdictional limitations on the power of decision makers. *Association of Data Processing Service Organizations, Inc. v. Camp*, 397 U.S. 150 (1970).

Indeed, this prohibition is enshrined not only in the United States Constitution, U.S. Const. art. III, § 2, but in the Idaho Constitution, Idaho Const. art. V, § 1; Idaho Const. art. V, § 20. This may be a hard issue, but it is also one which the Department is constitutionally obligated to address.

The Applicant wishes to underscore the limited nature of its standing argument.

The Applicant concedes that it has a duty in filing its application to make an *a priori* case. The Applicant is fully prepared to make that case to the Department's satisfaction. But the Applicant insists that it be allowed to do by presenting evidence directly and informally to the Department, and that it not be dragged through a costly formal hearing addressing injury or enlargement by parties who have no dog in the fight.

II. THE PROTESTANTS HAVE STANDING TO RAISE THE "LOCAL PUBLIC INTEREST," BUT THE SCOPE OF THAT TEST MUST BE LIMITED TO THE WATER RIGHT TRANSFERS AT ISSUE, NOT THE PROTESTANTS' BROADER SOCIAL POLICY AGENDA.

While challenging the Protestants' right to raise standing and enlargement issues, we concede that the Protestants are entitled to address the local public interest.[6] *Hardy v. Higginson*, 123 Idaho 485, 849 P.2d 946 , 950-51 (1993). But this standing is limited to issues bearing on the water transfer itself. This limited standing does not grant the Protestants *carte blanche* to drag the Applicant and the Department into a grand debate on the future of Idaho.

Based on all that has been said by the Protestants in their protests, at the prehearing conference, in discovery, and in other pleadings filed—all of which are not part of the record—it is apparent that the Protestants intend to conduct extensive discovery, subpoena numerous witnesses, and introduce potentially voluminous evidence

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[6]We know of no case addressing standing in the context of the "water conservation" criterion of section 42-203A(5)(f). While we do not press the issue now, we reserve the right to raise it later should the Protestants seek to go beyond the purpose of this statutory provision, as well.

with respect to social policy issues which have no bearing whatsoever on the water right transfer at hand. For instance, it appears that the Protestants are opposed to recent trends in dairy production which they allege entail larger and more concentrated dairy operations. The Protestants, apparently, believe that this trend brings with it unwelcome social change and environmental risks.

Although the Applicant does not share this gloomy view of the future of the Magic Valley, it is somewhat at a loss as how to respond to social questions over which it has no control and which have no bearing on its operation or its water rights. Moreover, it has been bombarded by burdensome and intrusive discovery requests which seek to explore issues which are far beyond the proper scope of this hearing.

Simply put, the Applicant does not own or control any dairy operation in the state. Rather it purchases milk from dairies throughout the region. Whether these perceived trends are true or false, good or bad, is simply beyond the ability of the Applicant to say. Much less can the Applicant control whether dairy farmers decide to expand or contract, consolidate or diversify.

The "local public interest" test, which the Protestants apparently intend to invoke, is not and never was intended to be used to dictate social and environmental policy changes via the water right transfer process.[7] It has been litigated rarely. In each case,

[7]The "local public interest" test was added to section 42-222 by the legislature in 1981. 1981 Idaho Sess. Laws, ch. 147. Section 42-222, in turn, references Idaho Code § 42-203A(5)(e), which sets out the local public interest criterion in the context of permits for new water rights: "that it will conflict with the local public interest, where

however, the test has been used to address effects from the water diversion itself.

The first case to apply the test was *Shokal v. Dunn*, 109 Idaho 330, 707 P.2d 441 (1985).[8] In this case, the Idaho Supreme Court remanded for a fuller hearing on the local public interest. It bears emphasis, however, that while *Shokal v. Dunn* stands for a "broad" application of the public interest test, it did not go overboard—as the Protestants do here.

Shokal dealt with environmental impacts resulting from the diversion of water for a proposed fish farm. The impacts of which the protestants in that case complained were palpable, non-speculative, and, most of all, direct. In short, they dealt with the transfer itself, not with the broader political action agenda of the protestants.

In the end, the court ordered the Department to take evidence on three items: (1) the finality of design (whether the proposed diversion was clearly enough defined), (2) the effect of dewatering the source stream on fish, and (3) the human health effects resulting from dewatering the source stream.

Plainly, these issues are all tied closely to the diversion itself, not on perceived social effects resulting from an attenuated chain of causation not linked to the water right

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the local public interest is defined as the affairs of the people in the area directly affected by the proposed use ...." The latter public interest provision was added on March 29, 1978. 1978 Idaho Sess. L., ch. 306, § 1, pp. 767-69.

[8] *Shokal* dealt with the public interest test in Idaho Code § 42-203A(5)(e) applicable to new permits. This is the set of criteria referenced in section 42-222 dealing with transfers.

at all. The court called this a broad review. But it is narrow indeed compared to what the Protestants are seeking to force on the Department and the Applicant today.

More importantly, indeed, absolutely critically, the court in *Shokal* drew a bright line limiting responsibility for review along agency lines. While the Department of Water Resources was authorized to consider "health" issues directly resulting from the diversion itself, it was not authorized to invent its own regulatory system.

The importance of this point cannot be overemphasized. The court told the IDWR to determine whether or not the applicant for the water permit was in compliance with existing environmental laws. It was not told to take evidence on what those regulations ought to be, and to develop its own agenda of new environmental policies. Here is the critical language:

> We ... add a word of caution regarding the differing functions of Water Resources and the Department of Health and Welfare. Water Resources must oversee the water resources of the state, insuring that those who have permits and licenses to appropriate water use the water in accordance with the conditions of the permits and licenses and the limits of the law. It is not the primary job of Water Resources to protect the health and welfare of Idaho's citizens and visitors—that role is vested in the Department of Health and Welfare, including compliance with the water quality regulations and monitoring effluent discharge in our state's waterways. Nevertheless, although these agencies may have separate functions, Water Resources is precluded from issuing a permit for a water appropriation project which, when completed, would violate the water quality standards of the Department of Health and Welfare. ... Hence, Water Resources should condition the issuance of a permit on a showing by the applicant that a proposed facility will meet

mandatory water quality standards.

Shokal at 451-52.

The distinction is clear. IDWR may require an applicant for a water right to be in compliance with environmental standards set by other agencies. But this department may not make up new standards, nor hear evidence on the need for new regulatory programs which the legislature and other agencies with appropriate regulatory authority have not seen fit to create.

As the pleadings, discovery, and statements of the Protestants amply show, their aim in the hearing is to do precisely this—to make a case that the regulation of dairy cows is insufficient and that the State of Idaho is "headed down the wrong path." This is an abuse of the "local public interest" standard. It is not allowed under our Supreme Court's clear mandate, and must not be allowed by the Department.

The other leading case on the subject is *Hardy v. Higginson*, 123 Idaho 485, 849 P.2d 946 (1993), another fish farm case. In this case, Hardy sought to amend two water permits which had been issued in 1971 and 1975. The changes were sought in order to correspond to a new right of way granted by the Bureau of Land Management ("BLM"). Various protestants opposed the amendment on the basis of impacts of the project on recreation, fishing, and aesthetics. The Director granted the application. but imposed certain conditions (aimed at protecting a sculpin pool) based on protection of the "local public interest" to which Hardy objected.

The court ruled against Hardy.[9] The court relied heavily on *Shokal v. Dunn* for its reasoning about the scope of the local public interest. The court did not specifically delineate the bounds of the public interest concerns which may be considered, but noted that the Box Canyon area had been designated an Area of Critical Environmental Concern by the BLM, and that the area included four candidate threatened and endangered species. The court concluded: "Clearly, the protection of this habitat falls within the local public interest as defined in *Shokal*." *Hardy*, 123 Idaho at 490, 849 P.2d. at 951.

This case simply reinforces the point made so clearly in *Shokal*. The local public interest, though broad, must nonetheless relate to the project itself and its impact on the environment and the people of the area.

The other two Idaho cases which have addressed the issue are in alignment with this basic point. *Collins Bros. Corp. v. Dunn*, 114 Idaho 600, 759 P.2d 891 (1988) (use of geothermal water for irrigation is not in the local public interest—obviously relates to the diversion itself); *Dovel v. Dobson*, 122 Idaho 59, 831 P.2d 527 (1992) (proposed

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[9]The court ruled that the Director may consider the local public interest under section 42-211 (despite the fact that the statute doesn't mention the public interest). The court also ruled that the Director may consider habitat issues raised by persons who do not live in Box Canyon, despite the language in the statute defining the local public interest as "the affairs of the people in the area directly affected by the proposed use." Finally, the court found that the Department could impose new conditions on the permit, based on the public interest, despite the fact that the original permits had been obtained prior to the adoption of the local public interest statute in 1978.

transfer did not conflict with local public interest where only issue raised was flooding of a local road—again, the flooding was directly related to the diversion of water). In short, the public interest test is focused on the water diversion at issue and the project it supports. It is not an open invitation to convert the Department into a free ranging political think tank or to turn water transfer proceedings into open-ended seminars on social change.

Rather, the purpose of the local public interest provision was to enable the Department of Water Resources to take into account apparent environmental and social impacts which flow from the water right transfer itself. Thus, for instance, if a proposed transfer would dewater a stream, killing fish and harming the environment, the Director certainly may take that into account.

Suppose, on the other hand, that the proposed transfer would have no perceptible impact on the environment, but would make water available in the production of electronic parts for televisions and computers. Should the Department and the Applicant in such a case be required to rebut testimony by a Protestant that the water right should be denied because people watch too much television and don't write letters by hand any more? After all, they would probably be right. We do watch too much television, and we really should write more old fashioned letters. But would anyone in their right mind suggest that this has anything to do with a water right transfer? Is there the remotest chance that our legislature in 1978 and again in 1981 intended to subject the state's

irrigators and other water users to this sort of second guessing by a centralized governmental policy bureau?

This example may seem outrageous. Until this case came along, I would have said it was. It would convert the IDWR into a socialist politburo capable of dictating how much cheese we should eat and how it should be made. Unfortunately, in the minds of some, apparently, this day is already here.

Indeed, some of these Protestants have adopted an strategy whose core goal is to abuse the Department's public participation procedures in order to inflict pain on companies who do not share their social agenda—regardless of whether the company has anything whatsoever to do with their social agenda.

Their strategy has been successful so far. The Protestants already have caused the Applicant to run up very substantial legal bills responding to the Protestants' preliminary legal maneuvering. The Applicant has had to fend off discovery requests which seek disclosure of highly confidential business information which, if released, the Protestants could use to the commercial disadvantage of the Applicant. The Applicant has been required to hire consultants and experts to prepare responses to issues which should not even be before the Department. Finally, and perhaps most to the point, the Applicant has been denied timely use of the water rights which it has purchased, a right which it is guaranteed under the Idaho Constitution.

III. THE APPLICANT HAS A RIGHT TO CHANGE ITS WATER RIGHT WITHOUT BASELESS INTERFERENCE.

We recognize that, in the ordinary case, the Department adopts a liberal approach to the conduct of hearings. That is appropriate. In the ordinary case, little if any harm is done by allowing everything in, and sorting it out later.

But this is no ordinary case.

The Protestants, or some of them, by their own admission at the prehearing conference, have launched a coordinated, concerted campaign whose goal is to interfere at every occasion with any development bearing on the dairy industry. They intend to undertake this irrespective of the merits of their position, repeatedly stating that they intend to "put the Applicant to its proof"—whatever the cost to the Applicant.

Consequently, the need to define—now—the proper scope of the upcoming proceeding is urgent. The Applicant has committed to a purchase price of $90,400.00 for the two water rights in question. Responding to the protests filed in opposition to the two transfers already has rapidly escalated that price, with no end in sight. The Applicant would not be in a position to complain if those protests were based on proper grounds with a legitimate factual basis. In this case, however, the Protestants have made it clear that they intend to run with as much rope as the Department will give them.

With everything riding on a single hearing, the Applicant has no choice but to spend thousand upon thousands of dollars preparing a full blown case—lest the Department be left with "unrebutted evidence." And that, of course, is exactly what the

Protestants are seeking to accomplish. It is a thinly veiled—indeed, not veiled at all—attempt to drive up the transaction costs of those with whom the Protestants disagree.[10]

This constitutes a direct attack on the Applicant's constitutional rights. As Judge Krogh said in her seminal article:

> It has been held that, absent injury, the right to make a change in use of a water right is inherent in the constitutional right of property ownership and that the statute setting forth the procedure and standards for change in use neither adds to nor detracts from existing rights. It therefore appears that the right to change is a constitutional right much like the constitutional "right to appropriate," although the right to change is not expressly stated in the Idaho constitution.

Lynne Krogh-Hampe, *Injury and Enlargement in Idaho Water Rights Transfers*, 27 Idaho L. Rev. 249, 251-52 (1990).

In short, the Protestants have not crossed a trivial line. Nor may the Department look the other way or cut them extra slack because they are trying to be good citizens. The Protestants are abusing the process established by the legislature for the orderly administration of water rights. They are abusing it on a massive scale in this and other cases. The Department must halt it, before greater damage is done.

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[10]Perhaps in the long run Applicants will be able to recover their attorney and consultant fees from the Protestants. We intend to preserve, and expect to pursue, that option. However, these recovery mechanisms are themselves costly, and each brings its own uncertainty. Our bottom line is that the Applicant simply should not be put through this process in the first instance.

CONCLUSION

For these reasons the Department should grant the Applicant's motion to restrict the scope of the hearing to those questions properly before the agency, and should issue a protective order to this effect.

Dated this 10th day of June, 1999.

GIVENS PURSLEY LLP

By _____
Christopher H. Meyer

Attorneys for Applicant
Jerome Cheese

CERTIFICATE OF SERVICE

I hereby certify that on June 10, 1999 I caused to be served a true and correct copy of the foregoing to each of the persons named below by the method indicated below each of their names.

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EXHIBIT A

Responses to Chisholm's First Discovery

Christopher H. Meyer, Esq.
Michael C. Creamer, Esq.
GIVENS PURSLEY LLP
277 North 6th Street, Suite 200
P.O. Box 2720
Boise, Idaho 83701-2720
Counsel for Applicant Jerome Cheese

Email: chm@givenspursley.com
Email: mcc@givenspursley.com
Office: 208-388-1200
Fax: 208-388-1300

BEFORE THE
IDAHO DEPARTMENT OF WATER RESOURCES

In the Matter of Application For Transfer Nos. 5401(Water Right No. X36-07337E)

Jerome Cheese,
Applicant

William K. Chisholm,
Lee J. Halper,
Protestants

In the Matter of Application For Transfer Nos. 5436 (Water Right No. 35-08606)

Jerome Cheese,
Applicant

William K. Chisholm,
Lee J. Halper,
Michael Ihler,
Darcy Thornborrow,
Protestants

APPLICANT JEROME CHEESE 'S RESPONSE TO BILL CHISHOLM'S FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

Comes now Applicant Davisco Foods International, Inc., dba Jerome Cheese, by and through its undersigned counsel, and in response to *Bill Chisholm's First Set of Interrogatories And Requests For Production of Documents Directed to Jerome Cheese Co* states as follows.

GENERAL OBJECTION: The interrogatories and all of their subparts constitute over forty questions in violation of the Idaho Rules of Civil Procedure. Notwithstanding such objection and without waiving same, Applicant responds as set out below.

RIGHT TO SUPPLEMENT: Jerome Cheese has responded as fully as practicable to these discovery requests. It reserves the right to supplement these responses as additional material and information is discovered or becomes available.

SERVICE: In anticipation of the informal consolidation of Transfer Nos. 5401 and 5436, these responses are being served on all four Protestants involved in both transfers.

RESERVATION OF RIGHTS: None of these responses or documents produced constitute a waiver by Jerome Cheese of any objection to their admission.

INTERROGATORY NO. 1: Please identify each person known to you or to your attorneys who has or may have knowledge of any fact pertinent or relevant as to your proposed Water Transfer Application No. 5401. In your answer to this interrogatory, please include any person who has been retained, hired or relied upon by you, your agents or representatives to review and issues raised by the Application. In your answer, please provide the full name, mailing address, physical address and phone number of each person identified.

RESPONSE TO INTERROGATORY NO. 1:

The Applicant objects to this interrogatory as being over broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence in that it requests, without limitation, the identification of every person with knowledge of the application. Notwithstanding such objections and without waiving same, the Applicant states as follows. The following persons may have knowledge of facts pertinent or relevant to the proposed transfer:

Lee Gleasemann, E.L.T
Scott McClure
McClure Engineering
P.O. Box 1404
Twin Falls, ID 83303

Brian Reed, E.I.T
Staff Engineer
Division of Environmental Quality
601 Pole Line Road, Ste. 2
Twin Falls. ID 83301-3035
Office: 208-736-2190

Charles E. Brockway, Ph.D., P.E.
Charles G. Brockway, Ph.D., P.E.
Brockway Engineering, P.L.L.C.
2016 Washington Street North, Ste. #4
Twin Falls, ID 83301
Office: 208-736-8543

Mr. William K. Chisholm
19073 E. Hwy. 30
Buhl, ID 83316
Home: 208-543-4418

Michael C. Creamer, Esq.
Givens Pursley LLP
277 N. 6th St., Ste. 200
P.O. Box 2720
Boise, ID 83701
Office: 388-1247

Mr. Jon Davis
General Manager
Jerome Cheese
47 West 100 South
P.O. Box 485
Jerome, ID 83338
Office: 208-324-8806

Mr. Bill Riebesell
Plant Superintendent
Jerome Cheese
47 West 100 South
P.O. Box 485
Jerome, ID 83338
Office: 208-324-8806

Mr. Karl J. Dreher
Director
Idaho Department of Water Resources
1301 N. Orchard St.
Statehouse Mail
Boise, ID 83720-9000
Office: 327-7920

Mr. Gary Funderburg
Idaho Department of Water Resources
1341 Fillmore St., Ste. 200
Twin Falls, ID 83301-3380
Office: 208-736-3033

Mr. Lee J. Halper
331 South 230 West
Jerome, ID 83338
Home: 208-324-2240

The Honorable Dennis Moore
Mayor of the City of Jerome
152 East Avenue A
Jerome, ID 83338
Office: 208-324-8189

Craig D. Hobdey, Esq.
Hobdey & Hobdey
125 Fifth Ave. W.
P.O. Box 176
Gooding, ID 83330-0176
Office: 208-934-4429

Paul K. Hunter, P.G.
Project Hydrogeologist
EnviroSearch International
1605 N. 13th St.
Boise, ID 83702
Office: 345-8292

Mr. Michael Ihler
2635-A East 3100 North
Twin Falls, ID 83301
Home: 208-734-7930

Mr. Scott L. Bybee.
J-U-B Engineers, Inc.
800 Falls Avenue
Twin Falls, ID 83301-3366
Office: 208-733-2414

Dr. Richard K. Kelsey
Senior Vice President
EnviroSearch International
1605 N. 13th St.
Boise, ID 83702
Office: 345-8292

Allen D. Merritt. P.E.
Southern Regional Manager
Idaho Department of Water Resources
1341 Fillmore St., Ste. 200
Twin Falls, ID 83301-3380
Office: 208-736-3033

Christopher H. Meyer, Esq.
Givens Pursley LLP
277 N. 6th Street, Ste. 200
P.O. Box 2720
Boise, ID 83701-2720
Office: 208-388-1236

Mr. J. Rex Minchey
Maintenance Manager
Jerome Cheese
47 West 100 South
P.O. Box 485
Jerome, ID 83338
Office: 208-324-8806

Senator John A. Sandy
3104 South 1200 East
Hagerman, ID 83332
(Vendor of water right, Transfer No. 5401)

Mr. Lewis Eilers
Executive Director
Idaho Dairymen's Association
890 Shoshone St. East
Twin Falls, ID 83301
Office: 208-736-1953

Mr. Roy Hincks
2851 W. 900 S.
Sterling, ID 83210
Home: 208-328-2440
(Vendor of water right, Transfer No. 5436)

Mr. L. Glen Saxton
Idaho Department of Water Resources
1301 N. Orchard
Statehouse Mail
Boise, ID 83720-9000
Office: 208-327-7955

Mr. James E. Stanton
Sr. Water Resource Agent
Idaho Department of Water Resources
1341 Fillmore St., Ste. 200
Twin Falls, ID 83301-3380
Office: 208-736-3033

Darcy Thornborrow
1676 East 3800 North
Buhl, ID 83316
Home: 208-543-5030

Mr. Charles H. Correll
City Councilman
City of Jerome
152 East A.
Jerome, ID 83338
Office: 208-324-8189

Mr. Ralph Peters
City Councilman
City of Jerome
152 East A.
Jerome. ID 83338
Office: 208-324-8189

Ms. Marjorie Schmidt
City Councilwoman
City of Jerome
152 East A.
Jerome. Id 83338
Office: 208-324-8189

Mr. Joe Skaug
City Councilman
City of Jerome
152 East A.
Jerome, ID 83338
Office: 208-324-8189

Each of the County Commissioners
of Jerome County

Various unknown staff
of the Idaho Division of Environmental Quality

Various unknown staff
of the Idaho Department of Agriculture

INTERROGATORY NO. 2: Please state each and every theory, claim, fact, supposition, scientific study, research or defense upon which you rely as a basis for your claim that this transfer is in compliance with the requirements as stated in Idaho Code 42-222.

ANSWER TO INTERROGATORY NO. 2: The Applicant objects to this interrogatory as being over broad and unduly burdensome in that it may be read to call for an articulation of the Applicant's entire presentation at the upcoming hearing. Moreover, the scope of issues to be heard has not yet been established by the Department. In addition the Protestants have provided to date minimal information—not to mention evasive, unresponsive and entirely unsatisfactory discovery responses—describing the nature and basis of their protests. The question also calls for speculation in that it requests identification at this time of theories, facts, etc. which will respond to and rebut issues and arguments which the Protestants' have not yet articulated. The Applicant will do its best at the hearing to respond to issues raised at that time, but it cannot be expected to anticipate them here and respond in advance. In addition, the Applicant objects on the grounds that the interrogatory calls for information protected by the attorney/client privilege and the attorney work product rule. Notwithstanding such objections and without waiving same, the Applicant states as follows:

The proposed water right transfer complies with the requirements of Idaho Code § 222(1), to wit: "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 42-203A(5), Idaho Code. and the new use is a beneficial use ...."

With respect to injury, the Applicant will show that the transfer will not result in any increase in the net depletion of the water. The Applicant will show that the former place of use will no longer be served by the part of the water right transferred. The Applicant will show that only the consumptive use portion of the water right is sought to be transferred. The Applicant will also show that the new points of diversion will draw on the same aquifer as the previous points of diversion. The Applicant will show that the new points of diversion will not result in interference with other water rights. The Applicant will show that the change in season and type of use will have no adverse impact on any water user.

With respect to enlargement. the Applicant will show that the proposed change will not result in any greater diversion rate, diversion volume. application, or consumptive use than before the change. In addition, the Applicant's issues on injury overlap with and will respond to the "no enlargement" requirement. See description of water rights attached hereto.

With respect to conservation, the Applicant will show that the proposed use of the water right is consistent with the Prior Appropriation Doctrine, including requirements of beneficial use and the concept of duty of water. The Applicant will further show that it has employed state-of-the art water conservation practices.

With respect to the local public interest, the Applicant will show that the transfer will not adversely affect water resources. the environment. or the economy, and that the proposed water use provides jobs. enhances the community and regional economy, and does not contribute to environmental degradation. The Applicant contends that the local public interest test is not intended to authorize the Idaho Department of Water Resources to look beyond these issues. and does not authorize the Department to evaluate the secondary and tertiary impacts of the Jerome Cheese on the Protestants' preferred life style. and specifically does not authorize the Department to evaluate the impacts of dairy production which Jerome Cheese does not own or control. Nor does the local public interest test authorize the Department to dictate whether a particular beneficial water use is better than another beneficial water use. Nor does the local public interest test authorize the Department to dictate whether the Applicant should select one water supply over another water supply. Nor does the local public interest test authorize the

Department to consider individual competitive effects of particular water transfers.

The Applicant contends that the Protestants do not have standing to raise any issues with respect to injury or enlargement, and have only limited standing with respect to conservation and local public interest, because they do not own any water rights which could be impacted by the proposed transfer.

INTERROGATORY NO. 3: Please identify every document of which you are aware that supports or tends to support your answer to Interrogatory No. 2 above.

ANSWER TO INTERROGATORY NO. 3: The Applicant renews and incorporates here each of its objections made in response to Interrogatory No. 2 above. Notwithstanding such objections and without waiving same, the Applicant states as follows:

The application is supported by the statements set out in the application filed by the Applicant in this matter, and by each of the pleadings, correspondence, and documents filed with the Department in this matter. It is also supported by the documents which are produced herewith.

INTERROGATORY NO. 4: Please identify all employees, suppliers or investors, of Jerome Cheese Co. who hold public office, or sit on any board that may have regulatory authority over any aspect of Jerome Cheese's operations, or whose relatives hold such positions of authority. In your answer, please provide the names, addresses and telephone numbers, payscale, job description, length of employment, shift position, office held, type of supplier, amount of investment.

ANSWER TO INTERROGATORY NO. 4: The Applicant objects to this interrogatory as being over broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Neither the ownership of Jerome Cheese, nor any suggestion of impropriety, was identified as an issue in this contested case by the Protestants in their protest or at the pre-hearing conference. Notwithstanding such objections and without waiving same, the Applicant states as follows:

To the best of the company's knowledge, no employee, supplier of or investor in Jerome Cheese, nor any relative thereof, holds any public office or sits on any board that may have regulatory authority over any aspect of Jerome Cheese's operations with the exception of the following:

Mr. Dennis Moore has been employed at Jerome Cheese for over three years in yard maintenance with a flexible shift. He also serves as Mayor of the City of Jerome.

Mr. David Moore has been employed at Jerome Cheese for over six years as an operator on the day shift. He is the son of Dennis Moore.

Neither person is in a position of management or similar authority at Jerome Cheese.

Jerome Cheese declines to provide their home addresses and telephone numbers on privacy grounds.

INTERROGATORY NO. 5: Please identify all owners, investors, partners, banks lienholders, mortgage companies, insurance companies or other people or parties who have a financial interest in Jerome Cheese and any of its affiliated subsidiaries, parent companies or other related business affiliations. In your answer, please specify the exact financial relationship for each party identified, including their positions, if any on the board, as employees, as stockholders, suppliers, or policy empowered shareholders, their names, their agents or representatives names, addresses, telephone numbers and place of employment.

ANSWER TO INTERROGATORY NO. 5: The Applicant objects to this interrogatory as being over broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. The Protestants have raised no issue in their protests or in the pre-hearing conference which has any bearing whatsoever on the information sought by this interrogatory. Moreover, finding, generating, collecting, or presenting the information would be difficult and unduly burdensome on the Applicant. Finally, the Applicant contends that disclosure of the financial information sought by this interrogatory would disclose confidential business information putting the Applicant at a competitive disadvantage. Notwithstanding such objections and without waiving same, the Applicant states as follows:

Davisco Foods International, Inc. dba Jerome Cheese is a closely held corporation incorporated in the State of Minnesota. It is wholly owned by Mark Davis and other family members.

Mark Davis, President
Davisco Foods International, Inc.
620 North Main Street
Le Suer, Minnesota 56058
Office: 507-665-8811

The family member and owner residing in Idaho is Jon Davis, identified above.

INTERROGATORY NO. 6: Please list all the dairies which supply milk to your business. In your answer, please include the name of the dairy, the name of the owner and manager of the dairy, the address, phone number and legal description of the dairy, the average yearly gallons or pounds of milk supplied by that dairy, the contractual arrangement with the dairy, the base price formula paid to the dairy, the milk transportation costs charged to the dairy if any, and the average yearly reimbursement paid to the dairy for the product supplied and all knowledge you have or can easily determine and supply as to the number of milking cows at each of there [sic] dairies. Also any documentation that speaks to the size of dairies.

ANSWER TO INTERROGATORY NO. 6: The Applicant objects to this interrogatory as being over broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. The Protestants have failed to articulate any particular basis for opposition to the proposed water right transfer. To the extent that Protestants may contend that suppliers of milk to Jerome Cheese are harming the environment or otherwise not in the local public interest, such issues are beyond the scope of the local public interest test, irrelevant, and inadmissible. Moreover, finding, generating collecting, or presenting the information would be difficult and unduly burdensome on the Applicant. Finally, the Applicant contends that disclosure of the financial, contractual and business practice information sought by this interrogatory would disclose confidential business information putting the Applicant at a competitive disadvantage. Notwithstanding such objections and without waiving same, the Applicant states as follows:

Jerome Cheese purchases milk products from a variety of suppliers throughout the Magic Valley. All milk contracts are verbal. Each contract contains a provision requiring strict compliance with applicable environmental and health regulations, and provides financial penalties for violations.

INTERROGATORY NO. 7: Please verify whether Jerome Cheese's Memorandum of Agreement of 12/16/98 with John Sandy for the purchase of 33 inches of water has been extended past the 120 day deadline noted therein and an and [sic]

extension agreement available by mutual consent contained therein been drafted and agreed to. Include in your answer, the persons or departments referred to in Section No. 5 and all documents or evidence obtained to determine this finding.

ANSWER TO INTERROGATORY NO. 7: The referenced contract was extended by a subsequent agreement. A second extension has been proposed. See documents produced herewith. For the convenience of the parties, we are also producing herewith proposed and final contract documents regarding the water right in Transfer No. 5436.

INTERROGATORY NO. 8: On page 2 of your Application to the Department for this transfer under the category "Remarks", you state "Process generates more waste water than what is brought into the plant." Please specify the source of the water that comes into your plant, the daily amount brought in and the daily amount processed out.

ANSWER TO INTERROGATORY NO. 8: Water is a by-product of cheese production. In other words, the extra water comes from the milk brought into the plant, which water is extracted during the cheese production process. Prior to disposal, the extracted water is used and reused numerous times during the production process pursuant to a state-of-the art recycling program. Jerome Cheese objects to the release of statistics regarding milk production on the ground that such information is confidential business information whose release would disadvantage the company. Moreover, Jerome Cheese is claiming no water right in this proceeding in connection with water it extracts from milk. Consequently, quantification of such volumes is unnecessary, burdensome, and irrelevant to this case.

INTERROGATORY NO. 9: Please state the exact reason or reasons for this water transfer. In your answer, delineate all possible scenarios of use, expanded use, future transfer of use, sale, hold for sale, or other possible.

ANSWER TO INTERROGATORY NO. 9: In response to the first question contained within Interrogatory No. 9, the reason the Applicant has filed for this water right transfer is to secure a viable, permanent, reliable, controllable, cost-effective, clean and independent source of water for its industrial use. In response to the second question, the Applicant objects that the question calls for speculation regarding unknown future scenarios. Notwithstanding such objections and without waiving same, the Applicants states:

No water is added to the cheese in the cheese making process. The Applicant uses water within the plant primarily for industrial cleaning purposes. A small amount of water is used for "domestic" purposes within the plant, such as drinking water, toilets,

sinks, showers, washing up and safety facilities, and the like. In addition, some water is used for industrial irrigation of lawns, etc. on the grounds. This description is provided for illustrative purposes, and is not intended to be exclusive or restrictive.

INTERROGATORY NO. 10: Was the establishment of Jerome Cheese Co. the result of recruitment to Jerome County, Idaho by city, county, or state economic development agencies? If so what were the names of such agencies, the name and principal agents or officials involved. If there were enticements in such recruitment, list the type and economic value of any such enticements.

ANSWER TO INTERROGATORY NO. 10: The Applicant objects to this interrogatory as being over broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. The Protestants have failed to articulate any particular basis for opposition to the proposed water right transfer, and have said nothing in their pleadings or at the prehearing conference which remotely suggests any impropriety or other issue bearing on any incentives which may or may not have been offered to Jerome Cheese. To the extent that Protestants may choose to make an issue of any financial or other incentives which may have been offered to Jerome Cheese in connection with the location of its plant, the Applicant contends that such issues are beyond the scope of the local public interest test, irrelevant, and inadmissible. Moreover, finding, generating, collecting, or presenting records relating to the location of the plant would be difficult and unduly burdensome on the Applicant. Finally, the Applicant contends that disclosure of the information sought by this interrogatory would disclose confidential business information putting the Applicant at a competitive disadvantage. Notwithstanding such objections and without waiving same, the Applicant states as follows:

Prior to locating its current facility in Jerome, Jerome Cheese engaged in discussions with officials of the City of Jerome, Jerome County, and the State of Idaho in which a variety of issues were discussed, including services, taxation, land use and regulatory matters. Jerome Cheese was satisfied with those discussions, and relied upon them in making its decision to locate in Jerome. No special treatment was sought or received, nor was any written agreement entered into with any governmental body providing for incentives or other benefits in connection with the location of Jerome Cheese in Idaho.

INTERROGATORY NO. 11: Supply any and all documents, contracts and agreements that pertain to Interrogatory number 10.

ANSWER TO INTERROGATORY NO. 11: The Applicant incorporates here all

objections made with respect to Interrogatory No. 10.

REQUEST FOR PRODUCTION NO. 1: Please produce each document described or identified or relied upon by you in your response any of the above Interrogatories 1 thru 11.

RESPONSE TO REQUEST FOR PRODUCTION NO. 1: The Applicant incorporates here each and every objection made above to Interrogatory Nos. 1 through 11. Notwithstanding such objections and without waiving same, Applicant is producing the documents identified on the List of Documents Produced, attached as exhibits hereto. Certain of these documents are being withheld pending resolution of Applicant's Motion in Limine and Motion for Protective Order which will be filed separately. All documents not being produced are clearly identified as such, and are being produced to the Hearing Officer on a confidential basis for "in camera" inspection pursuant to said motions.

Dated this 7th day of June, 1999.

GIVENS PURSLEY LLP

By _____
Christopher H. Meyer

Attorneys for Applicant
Jerome Cheese

VERIFICATION

J. Rex Minchey, acting under authority of and on behalf of Jerome Cheese, being first duly sworn upon oath, deposes and says:

Jerome Cheese is the Applicant in the above-captioned matter. I serve as Maintenance Manager for Jerome Cheese and am authorized by Jerome Cheese to respond to all discovery in this matter on behalf of Jerome Cheese. I have read the foregoing requests and responses. The statements contained therein are true to the best of my knowledge and belief.

Dated: June 8, 1999

J. Rex Minchey
Maintenance Manager
Jerome Cheese

STATE OF IDAHO)
) ss.
COUNTY OF JEROME)

On this 8 day of June, 1999, before me, a Notary Public, personally appeared J. Rex Minchey, known or identified to me to be the Maintenance Manager of Jerome Cheese, whose name is subscribed to the foregoing instrument on behalf of said corporation, and acknowledged to me that s/he is authorized to and did execute the same on behalf of said corporation.

NOTARY PUBLIC for Idaho
Residing at Jerome, Jerome County, Idaho
My commission expires: 3/13/2003

LIST OF DOCUMENTS PRODUCED

1. Proposed First Addendum to Agreement with Roy Hincks (w/attachments)
2. Proposed Second Addendum to Agreement with John Sandy (w/attachments)
3. Correspondence with Craig Hobdey and Roy Hincks re water agreements (Hobdey, Dec. 17, 1998, April 16, 1999, May 7, 1999, June 5, 1999) (Hincks, June 5, 1999)
4. Memo of June 6, 1999 from CHM to Consultants
5. Appendix D — Standards for Water Sources
6. Letter from Chuck Brockway to DEQ (May 4, 1999)
7. Project Manual—Technical Specifications for New Well Installation
8. Well Driller's Report
9. Map of Jerome Area
10. Fax from Magic Valley Maid with pump drawings
11. Letter from Chuck Brockway to IDWR (May 5, 1999)
12. Map and Well Driller's Reports
13. Brockway notes
14. Letter from Chuck Brockway to Scott McClure (March 31, 1999)
15. Letter from Dennis Moore to IDWR (May 28, 1999)
16. Letter from Con P. Paulos to IDWR (June 4, 1999)

LIST OF DOCUMENTS SUBJECT TO IN CAMERA INSPECTION[1]

17. Jerome Cheese—Milk Suppliers List
18. Jerome Cheese — Vendor List
19. Letter from DEQ to Lee Glaesemann (May 18, 1999)
20. Letter from DEQ to Chuck Brockway (April 27, 1999)
21. Letter from DEQ to Chuck Brockway (May 18, 1999)
22. Drinking Water Monitoring Requirements
23. Compliance Monitoring Requirements Under the Standardized Monitoring Framework
24. Jerome Cheese — Employee List
25. Letter from DEQ to Chuck Brockway to DEQ (May 6, 1999)
26. Engineering drawings
27. Letter from DEQ to Chuck Brockway (May 18, 1999)
28. Well construction design checklist
29. Letter from DEQ to Lee Glaesemann (May 6, 1999)
30. City of Jerome—Notice (June 3, 1997)
31. City of Jerome—Industrial Waste Discharge Permit (Sept. 15, 1995)
32. Letter from DEQ to Nikki Arnold (March 6, 1995)
33. City of Jerome—Bill No. 272, Ordinance No. 799
34. City of Jerome—Agreement (April 3, 1998)

[1]Withheld pending resolution of Applicant's Motion in Limine and Motion for Protective Order.

CERTIFICATE OF SERVICE

I hereby certify that on June 8th, 1999 I caused to be served a true and correct copy of the foregoing to each of the persons named below by the method indicated below each of their names.

Mr. William K. Chisholm
19073 E. Hwy 30
Buhl, ID 83316
☑ U.S. Mail ☐ Fax ☐ By hand ☐ Overnight

Mr. Lee J. Halper
331 South 230 West
Jerome, ID 83338
☑ U.S. Mail ☐ Fax ☐ By hand ☐ Overnight

Mr. Michael Ihler
2635-A East 3100 North
Twin Falls, ID 83301
☑ U.S. Mail ☐ Fax ☐ By hand ☐ Overnight

Ms. Darcy Thornborrow
1676 East 3800 North
Buhl, ID 83316
☑ U.S. Mail ☐ Fax ☐ By hand ☐ Overnight

Christopher H. Meyer

EXHIBIT B

Responses to Halper's First Discovery

COPY

Christopher H. Meyer, Esq.
Michael C. Creamer, Esq.
GIVENS PURSLEY LLP
277 North 6th Street, Suite 200
P.O. Box 2720
Boise, Idaho 83701-2720
Counsel for Applicant Jerome Cheese

Email: chm@givenspursley.com
Email: mcc@givenspursley.com
Office: 208-388-1200
Fax: 208-388-1300

BEFORE THE
IDAHO DEPARTMENT OF WATER RESOURCES

In the Matter of Application For Transfer Nos. 5401(Water Right No. X36-07337E)

Jerome Cheese,
Applicant

William K. Chisholm,
Lee J. Halper,
Protestants

In the Matter of Application For Transfer Nos. 5436 (Water Right No. 35-08606)

Jerome Cheese,
Applicant

William K. Chisholm,
Lee J. Halper,
Michael Ihler,
Darcy Thornborrow,
Protestants

APPLICANT JEROME CHEESE 'S RESPONSE TO LEE HALPER'S FIRST SET OF INTERROGATORIES, REQUESTS FOR ADMISSION, AND REQUESTS FOR PRODUCTION OF DOCUMENTS

Comes now Applicant Davisco Foods International, Inc., dba Jerome Cheese, by and through its undersigned counsel, and in response to *Lee Halper's First Set of Interrogatories, Requests for Admissions, and Requests For Production of Documents Directed to Jerome Cheese Company* states as follows.

GENERAL OBJECTION: The interrogatories and all of their subparts constitute over forty questions in violation of the Idaho Rules of Civil Procedure. Notwithstanding such objection and without waiving same, Applicant responds as set out below.

RIGHT TO SUPPLEMENT: Jerome Cheese has responded as fully as practicable to these discovery requests. It reserves the right to supplement these responses as additional material and information is discovered or becomes available.

SERVICE: In light of the informal consolidation of Transfer Nos. 5401 and 5436, these responses are being served on all four Protestants involved in both transfers.

RESERVATION OF RIGHTS: None of these responses or documents produced constitute a waiver by Jerome Cheese of any objection to their admission.

Item 1 (Interrogatory No.1)

Please identify yourself (the person or persons responding to these discovery requests), and identify each and every person with whom you consulted in preparing these responses.

ANSWER:

These responses were prepared by J. Rex Minchey with the assistance of undersigned counsel. In preparing these responses, Mr. Minchey and undersigned counsel consulted with Jon Davis of Jerome Cheese, Michael C. Creamer of Givens Pursley LLP, Charles E. Brockway of Brockway Engineering, and Paul K. Hunter of EnviroSearch International.

Item 2 (Interrogatory No. 2)

Please state whether you have read and understood the instructions and

introductory materials provided above.

ANSWER:

Yes

Item 3 (Interrogatory No. 3)

Please identify each person known to you or to your attorneys who has or may have knowledge of any fact pertinent or relevant as to your proposed Water Transfer Application No. 5401. In your answer to this Interrogatory, please include any person who has been retained, hired or relied upon by you, your agents or representatives to review any issues raised by the Application. In your answer, please provide the full name, mailing address, physical address and phone number of each person identified.

ANSWER:

Please see responses Responses to *Bill Chisholm's First Set of Interrogatories And Requests For Production of Documents Directed to Jerome Cheese Co.* (hereinafter "First Chisholm Discovery").

Item 4 (Interrogatory No. 4)

Please state each and every theory, claim, fact, supposition, scientific study, research or defense upon which you rely as a basis for your claim that this Transfer is in compliance with the requirements as stated in Idaho Code 42-222.

ANSWER:

Please see responses to First Chisholm Discovery.

Item 5 (Request for Production No.1)

Please identify every document of which you are aware that supports or tends to support your answer to Interrogatory 2 above.

ANSWER:

Please see responses to First Chisholm Discovery.

Item 6 (Interrogatory No. 6)

Please identify all employees, full and part-time, of Jerome Cheese Company. In your answer, please provide their addresses, pay scale, job description, length of employment, and shift position. Please include all subcontractors and people and companies hired temporarily and/or providing an ongoing service, their names, addresses, telephone numbers and describe the services performed, pay issued and dates and times of service related to this question. In addition, please list the starting wage and benefit package for a new employee with no experience for each department and/or job description.

ANSWER:

Please see responses to First Chisholm Discovery.

Item 7 (Interrogatory No. 7)

Please identify all owners, investors, partners, banks, lienholders, mortgage companies, insurance companies or other people or parties who have a financial interest in Jerome Cheese Company and any of its affiliated subsidiaries, parent companies or other related business affiliations. In your answer, please specify that exact financial relationship for each party identified, including their positions, if any, on the board, as employees, as stockholders, or policy empowered shareholders, their names, their agents' or representatives names, addresses, telephone numbers and place of employment.

ANSWER:

Please see responses to First Chisholm Discovery.

Item 8 (Interrogatory No. 8)

Please list all dairies by which you are supplied milk for your business. In your answer, please include the name of the dairy, the name of the owner and manager of the dairy, the address, phone number and legal description of the dairy, the average yearly gallons or pounds of milk supplied by that dairy, the contractual arrangement with the dairy, the base price formula paid to the dairy, the milk transportation costs charged to

the dairy, if any, and the average yearly reimbursement paid to the dairy for the product supplied, and all knowledge you have or can easily determine and supply as to the number of milking cows at each of these dairies.

ANSWER:

Please see responses to First Chisholm Discovery.

Item 9 (Interrogatory No. 9)

Please supply the names, addresses and telephone numbers of all people, companies, corporations or other entities to whom you supply and/or sell your cheese to. In your answer, please provide the contractual agreement with these entities, final destination address of shipment for end use of product sold, and the average yearly pounds of cheese shipped to each entity and the average yearly amount of reimbursement you receive for these shipments previously listed.

ANSWER:

Objection. This interrogatory is over broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. The Protestants have raised no issue in their protests or in the pre-hearing conference which has any bearing whatsoever on the information sought by this interrogatory. Moreover, finding, generating, collecting, or presenting the information would be difficult and unduly burdensome on the Applicant. Finally, the Applicant contends that disclosure of the financial and business information sought by this interrogatory would disclose confidential business information putting the Applicant at a competitive disadvantage.

Item 10 (Interrogatory No. 10)

Please verify whether Jerome Cheese's Memorandum of Agreement of 12\16\98 with John Sandy for the purchase of 33 inches of water has been extended past the 120 day deadline noted therein and an extension agreement available by mutual consent contained therein been drafted and agreed to. Include in your answer, the persons or departments referred to in Section No. 5 and all documents or evidence obtained to determine this finding.

ANSWER:

Please see responses to First Chisholm Discovery.

Item 11 (Interrogatory No. 11)

On page 2 of your Application to the Department for this transfer under the category 'Remarks', you state "Process generates more wastewater than what is brought into the plant." Please specify the source of the wastewater that comes into your plant, the daily amount brought in and the daily amount processed out.

ANSWER:

Please see responses to First Chisholm Discovery.

Item 12 (Interrogatory No. 12)

Please state the exact reason or reasons for this water transfer. In your answer, delineate all possible and addressed scenarios of use, expanded use, future transfer of use, sale, hold for sale, cessation of present water supply agreements or other possibilities.

ANSWER:

Please see responses to First Chisholm Discovery.

Item 13 (Interrogatory No. 13)

Please provide an accounting of all water used and generated in the operation of the facility. In your answer, include all inputs, outputs and exported water, water used for manufactured product, water used for cleaning and sanitation, et cetera. This accounting should provide a detailed water usage summary and budget for past years and a forecast on future water use. Include a description of all water and wastewater measurement devices and methods or procedures used to monitor these devices. Please include all documents relating to the water and wastewater measurement devices. In your answer, please provide water conservation measures you have implemented for the last 5 years.

ANSWER:

The information sought by this interrogatory is not available. To the extent that such information is generated during the course of preparation for the upcoming hearing, it will be produced.

Item 14 (Interrogatory No. 14)

Please provide a detailed history of your association with regards to your locating your business in Idaho. In your answer, include all people, groups, associations, cities, counties, entities with which you interacted from the time you first considered the possibility of locating in Idaho to the present. Please include all understandings, agreements, verbal contracts, and oral arrangements that passed between your Company and each of these people.

ANSWER:

Please see responses to First Chisholm Discovery.

Item 15 (Interrogatory No. 15)

Please provide a water budget for the whole water right X36-07337E for the last 5 years. In your answer, please provide water conservation measures you have implemented for the last 5 years.

ANSWER:

The information sought by this interrogatory is not available. To the extent that such information is generated during the course of preparation for the upcoming hearing, it will be produced.

Item 16 (Interrogatory No. 16)

Please provide any documentation that proves that you have only a verbal contract with Kraft Foods, International and/or any of its related companies. In your answer, include any contractual arrangements you have with Kraft Foods, as well.

ANSWER:

Please see responses to First Chisholm Discovery.

Item 17 (Interrogatory No. 17)

Please provide any and all contracts that relate to sewer usage and/or wastewater treatment and fresh water supply with regards to your Company's operation in Jerome. In your answer, please provide all pre-contractual memos, notes, understandings, verbal agreements or other data or criteria that steered your Company to its present existing Contracts.

ANSWER:

Objection. This interrogatory is over broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. The Protestants have raised no issue in their protests or in the pre-hearing conference which has any bearing whatsoever on the information sought by this interrogatory. Moreover, finding, generating, collecting, or presenting the information would be difficult and unduly burdensome on the Applicant. Finally, the Applicant contends that disclosure of the financial and business information sought by this interrogatory would disclose confidential business information putting the Applicant at a competitive disadvantage.

Item 18 (Interrogatory No. 18)

Please provide a copy of your Industrial wastewater permit, a list of all violations, the resulting effects of those violation, the regulatory consequences and negotiations of those violations, the stated reasons for those violations and the Company's actions to ensure those violations would not recur. In your answer, please explain in the narrative a description of the above categorizations of violations.

ANSWER:

Objection. This interrogatory is over broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. The Protestants have raised no issue in their protests or in the pre-hearing conference which has any bearing whatsoever on the information sought by this interrogatory. Moreover, finding, generating, collecting, or presenting the information would be difficult and unduly burdensome on the Applicant. Finally, the Applicant contends that disclosure of the financial and business information sought by this interrogatory would disclose confidential business information putting the Applicant at a competitive disadvantage.

Item 19 (Interrogatory No. 19)

Please provide a detailed list of all drugs, medicines, antibiotics, compounds, elements, viruses, bacteria, fungi, microbes and chemicals you test for in the milk. In your answer, provide the procedure, time frame, degree of accuracy, legal requirements, and process involved in this testing as well as all reporting agencies involved.

ANSWER:

Objection. This interrogatory is over broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. The Protestants have raised no issue in their protests or in the pre-hearing conference which has any bearing whatsoever on the information sought by this interrogatory. Moreover, finding, generating, collecting, or presenting the information would be difficult and unduly burdensome on the Applicant. Finally, the Applicant contends that disclosure of the financial and business information sought by this interrogatory would disclose confidential business information putting the Applicant at a competitive disadvantage.

Item 20 (Interrogatory No. 20)

Please provide the procedures involved if you find a contaminated (as per Item 19) truckload of milk. In your answer, describe the procedure for identifying the contaminated tanker, where the tanker is held, the time necessary for all tests to be run and how this affects the waiting tanker and the eventual destination of the contaminated milk.

ANSWER:

Objection. This interrogatory is over broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. The Protestants have raised no issue in their protests or in the pre-hearing conference which has any bearing whatsoever on the information sought by this interrogatory. Moreover, finding, generating, collecting, or presenting the information would be difficult and unduly burdensome on the Applicant. Finally, the Applicant contends that disclosure of the financial and business information sought by this interrogatory would disclose confidential business information putting the Applicant at a competitive disadvantage. Notwithstanding these objections and without waiving same, the Applicant refers the Protestant to Applicant's response to Interrogatory No. 6 of Chisholm's First Discovery.

Item 21 (Interrogatory No. 21)

Please provide the annual budget and systems loading budget for your pretreatment facility.

ANSWER:

Objection. This interrogatory is over broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. The Protestants have raised no issue in their protests or in the pre-hearing conference which has any bearing whatsoever on the information sought by this interrogatory. Moreover, finding, generating, collecting, or presenting the information would be difficult and unduly burdensome on the Applicant. Finally, the Applicant contends that disclosure of the financial and business information sought by this interrogatory would disclose confidential business information putting the Applicant at a competitive disadvantage.

Item 22 (Interrogatory No. 22)

Please list all other places of business that are operated in direct association with your Company. In your answer, list the State, address, telephone number, name of Executive in Charge of the ancillary or subsidiary business, the degree of association both legally and financially.

ANSWER:

Objection. This interrogatory is over broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. The Protestants have raised no issue in their protests or in the pre-hearing conference which has any bearing whatsoever on the information sought by this interrogatory. Moreover, finding, generating, collecting, or presenting the information would be difficult and unduly burdensome on the Applicant. Finally, the Applicant contends that disclosure of the financial and business information sought by this interrogatory would disclose confidential business information putting the Applicant at a competitive disadvantage.

Item 23 (Interrogatory No. 23)

Please list all Company and Directors and Executive's charitable donations, political donations and contributions to community efforts made since locating to Idaho.

In your answer, provide a separate list of monies derived from I.S.D.A. pulled milk permit sales, the charities receiving said monies, the dairies associated with each donation, and the tax benefit derived by this donation and the name of the person or Company deriving said tax benefit.

ANSWER:

Objection. This interrogatory is over broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. The Protestants have raised no issue in their protests or in the pre-hearing conference which has any bearing whatsoever on the information sought by this interrogatory. Moreover, finding, generating, collecting, or presenting the information would be difficult and unduly burdensome on the Applicant. Finally, the Applicant contends that disclosure of the financial and business information sought by this interrogatory would disclose confidential business information putting the Applicant at a competitive disadvantage.

Item 24 (Interrogatory No. 24)

Please indicate the final destination, beneficial use and name of water right holder of the potable wastewater that is discharged daily into the North Side Canal Company system. In your answer, provide the total yearly number of gallons discharged, the certification testing requirements and the extent of the review extended to alternate uses of this water.

ANSWER:

The Applicant does not possess this information. Moreover, the Applicant objects to this interrogatory is over broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. The Protestants have raised no issue in their protests or in the pre-hearing conference which has any bearing whatsoever on the information sought by this interrogatory. Moreover, finding, generating, collecting, or presenting the information would be difficult and unduly burdensome on the Applicant. Finally, the Applicant contends that disclosure of the financial and business information sought by this interrogatory would disclose confidential business information putting the Applicant at a competitive disadvantage.

Item 25 (Interrogatory No. 25)

Please describe the major development you have started as referenced in the IDWR memo of December 18, 1998. In your answer, describe how this Transfer is necessary for this development, or not, and how the denial of this Transfer will affect this development.

ANSWER:

The Applicant intends to expand its operation and increase its level of cheese and whey production. However, water is not an input into the production of the cheese and whey products themselves. Rather, water is required at the plant for other purposes, as described in our responses to Chisholm's First Discovery. These other uses are expected to remain relatively constant, despite future increases in cheese and whey production. Consequently, additional water supplies are not required to facilitate the anticipated expansion. Rather, as explained in our responses to Chisholm's First Discovery, the water sought pursuant to the pending application is needed to replace and/or supplement existing supplies and to secure a viable, permanent, reliable, controllable, cost-effective, clean and independent source of water for its industrial use

Item 26 (Interrogatory No. 26)

Please list all alternatives open to you to obtain more water including this transfer. In your answer, include all projected financial comparisons for each option, including this transfer.

ANSWER:

Please see responses to First Chisholm Discovery.

Item 27 (Request for Admission No. 1)

Please admit that this water right was forfeit[ed].

ANSWER:

Denied.

Item 28 (Interrogatory No. 27)

If your response to Item 27 is anything other than an unqualified admission, please state each and every fact and legal theory, case and statute which you contend supports your claim that this water right is not forfeit.

ANSWER:

Objection. This issue was not raised in the prehearing conference nor in the protest, pleadings, or discovery. Consequently, Applicant objects that the issue cannot be raised at this stage of the proceeding. Notwithstanding such objection and without waiving same, the Applicant states that it has no information suggesting or supporting that a forfeiture has occurred.

Item 29 (Request for Production No. 2)

If your response to Item 27 is anything other than an unqualified admission, please produce any and all documents which bear upon or provide evidence with respect to your proof that this water right is not forfeit.

ANSWER:

None.

Item 30 (Request for Admission No. 2)

Please admit that this Transfer will injure other water rights.

ANSWER:

Denied.

Item 31 (Interrogatory No. 28)

If your response to Item 30 is anything other than an unqualified admission, please state each and every fact which you contend supports your claim that the proposed Transfer will not injure other water rights.

ANSWER:

Our consultants are now in the process of collecting and analyzing data and preparing their presentations with respect to injury and enlargement. As information and documents become available, they will be made available through supplementation of these responses.

Item 32 (Request for Production No. 3)

If your response to Item 30 is anything other than an unqualified admission, please produce any and all documents which bear upon or provide evidence with respect to your proof that this Transfer will not injure other water rights.

ANSWER:

Same as Answer to Item 31 above.

Item 33 (Request for Admission No. 3)

Please admit that this Transfer will constitute an enlargement in the use of the original right.

ANSWER:

Denied.

Item 34 (Interrogatory No. 29)

If your response to Item 33 is anything other than an unqualified admission, please state each and every fact which you contend supports your claim that the proposed Transfer will not constitute an enlargement in the use of the original right.

ANSWER:

First, applicant contends that enlargement is not an issue in a transfer proceeding in which the original use(s) of the water are ended and entirely new use(s) are substituted. Second, to the extent enlargement is an issue, no enlargement would occur here because there is no increase in the use or application of water. Only the consumptive use component will be transferred.

Item 35 (Request for Production No. 4)

If your response to Item 30 is anything other than an unqualified admission, please produce any and all documents which bear upon or provide evidence with respect to your proof that this Transfer will not constitute an enlargement of the water right.

ANSWER:

Please see documents produced with Chisholm's First Discovery.

Item 36 (Request for Admission No.4)

Please admit that this Transfer is not in the public interest.

ANSWER:

Denied.

Item 37 (Interrogatory No. 30)

If your response to Item 36 is anything other than an unqualified admission, please state each and every fact with you contend supports your claim that the proposed Transfer is in the public interest.

ANSWER:

Please see responses and documents produced in connection with Chisholm's First Discovery.

Item 38 (Request for Production No. 5)

If your response to Item 36 is anything other than an unqualified admission, please produce any and all documents which bear upon or provide evidence with respect to your proof that this Transfer is in the public interest.

ANSWER:

Please see documents produced in connection with Chisholm's First Discovery.

Item 39 (Request for Admission No. 5)

Please admit that you see basis to the claim that this Transfer could, under any conditions, be detrimental to the public interest.

ANSWER:

We do not understand the question. If the thrust of the request for admission is that there are no conditions under which approval of the transfer application would be in the public interest, we deny.

Item 40 (Interrogatory No. 31)

If your response to Item 39 is anything other than an unqualified admission, please state each and every fact which you contend supports your claim that the proposed Transfer could not, under any condition, be detrimental to the public interest.

ANSWER:

Please see Answer to Item 39.

Item 41 (Request for Production No. 6)

If your response to Item 39 is anything other than an unqualified admission, please produce any and all documents which bear upon or provide evidence with respect to your proof that this Transfer could not, under any condition, be detrimental to the public interest.

ANSWER:

Please see Answer to Item 39. Also see documents produced in connection with Chisholm's First Discovery.

Item 42 (Request for Admission No. 6)

Please admit that this Transfer is not consistent with the conservation of water resources within the State of Idaho.

ANSWER:

Denied.

Item 43 (Interrogatory No. 32)

If your response to Item 42 is anything other than an unqualified admission, please state each and every fact which you contend supports your claim that the proposed Transfer is consistent with the conservation of water resources within the State of Idaho.

ANSWER:

Please see responses to Chisholm's First Discovery.

Item 44 (Request for Production No. 7)

If your response to Item 42 is anything other than an unqualified admission, please produce any and all documents which bear upon or provide evidence with respect to your proof that this Transfer is consistent with the conservation of water resources within the State of Idaho.

ANSWER:

Please see prior answers.

Item 45 (Request for Admission No. 7)

Please admit that this Transfer will constitute a consumptive use.

ANSWER:

We are not certain that we understand this question. The proposed use is a consumptive use in the sense that some of the water diverted will be consumed or lost in the course of beneficial use. In this sense, it is no different from virtually any other industrial or agricultural water right.

Item 46 (Interrogatory No. 33)

If your response to Item 45 is anything other than an unqualified admission, please state each and every fact which you contend supports your claim that the proposed Transfer will not constitute a consumptive use.

ANSWER:

Please see response to Item 45.

Item 47 (Request for Production No. 8)

If your response to Item 45 is anything other than an unqualified admission, please produce any and all documents which bear upon or provide evidence with respect to your proof that this Transfer will not constitute a consumptive use.

ANSWER:

Please see response to Item 45.

Item 48 (Request for Admission No. 8)

Please admit that this Transfer constitutes a change in the nature of use from agricultural to commercial/industrial use.

ANSWER:

Admitted.

Item 49 (Interrogatory No. 34)

If your response to Item 48 is anything other than an unqualified admission, please state each and every fact which you contend supports your claim that the proposed Transfer does not constitute a change in the nature of use from agricultural to commercial/industrial use.

ANSWER:

The proposed change in use to industrial is stated on the application. Also see documents produced in connection with Chisholm's First Discovery.

Item 50 (Request for Production No. 9)

If your response to Item 48 is anything other than an unqualified admission, please produce any and all documents which bear upon or provide evidence with respect to your proof that this Transfer does not constitute a change in the nature of use from agricultural to commercial/industrial use.

ANSWER:

The proposed change in use to industrial is stated on the application. Also see documents produced in connection with Chisholm's First Discovery.

Item 51 (Request for Admission No.9)

Please admit that you own no water rights.

ANSWER:

Denied.

Item 52 (Interrogatory No. 35)

If your response to Item 51 is anything other than an unqualified admission, please identify each water right you own wherein the water from each right is not physically connected in reality.

ANSWER:

Jerome Cheese has purchased the two water rights which are subject to transfer applications No. 5401 and 5436. As contract documents which have been produced show, full payment is not required until the transfers are approved by the Department. Jerome Cheese owns no other water rights. We do not know what the Protestant means by "wherein the water from each right is not physically connected in reality." If the intent is to inquire whether the proposed new point(s) of diversion (after transfer) will draw from the same aquifer as the original point(s) of diversion (before transfer), the Applicant contends that this is the case.

Item 53 (Request for Production No. 10)

If your response to Item 51 is anything other than an unqualified admission, please produce any and all documents which bear upon or provide evidence with respect to your proof that the water from each right is not physically connected in reality.

ANSWER:

Please see response to Item No. 52.

Our consultants are now in the process of collecting and analyzing data and preparing their presentations with respect to injury and, in particular, the impact of the change in point of diversion. As information and documents become available, they will be made available through supplementation of these responses.

Item 54 (Request for Admission No. 10)

Please admit that expansion of your Company has the overall effect of increasing the overall consumptive use of groundwater by requiring the need for more dairy cows.

ANSWER:

We are without sufficient information to admit or deny. Consequently, we deny.

Item 55 (Interrogatory No. 36)

If your response to Item 54 is anything other than an unqualified admission, please state each and every fact which you contend supports your claim that the expansion of your Company does not require the need for more dairy cows.

ANSWER:

Please see response to Item 54.

Item 56 (Request for Production No. 11)

If your response to Item 54 is anything other than an unqualified admission, please produce any and all documents which bear upon or provide evidence with respect to your proof that the expansion of your Company does not require the need for more dairy cows.

ANSWER:

Please see response to Item 54. Also, see documents produced in conjunction with Chisholm's First Discovery.

Item 57 (Request for Admission No. 11)

Please admit that you know the limits of the sustainability or natural cycle or chemical balance of dairy nutrients (manure) and wastewater when land applied, in a cow per acre relationship.

ANSWER:

Denied.

Item 58 (Interrogatory No. 37)

If your response to Item 57 is anything other than an unqualified admission, please state each and every fact which you contend supports your claim that you do not know the limits of the sustainability or natural cycle or chemical balance of dairy nutrients (manure) and wastewater when land applied, in a cow per acre relationship.

ANSWER:

Objection. This interrogatory is ambiguous, over broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Moreover, finding, generating, collecting, or presenting the information would be difficult and unduly burdensome on the Applicant.

Item 59 (Interrogatory No. 38)

If your response to Item 57 is in the negative please state all efforts made by your Company to obtain knowledge, prior to this Discovery, as to these limits and whether you believe these limits should affect your proposed Transfer.

ANSWER:

Objection. This interrogatory is ambiguous, over broad, unduly burdensome, and

not reasonably calculated to lead to the discovery of admissible evidence. Moreover, finding, generating, collecting, or presenting the information would be difficult and unduly burdensome on the Applicant.

Item 60 (Interrogatory No. 39)

In regards to the limits referenced in Item 57, if it is found by reliable scientific sources, such as U.S.G.S.. D.E.Q. or I.S.D.A. that these limits have been exceeded, would you support possible action to have these limits met?

ANSWER:

Objection. This request documents the ulterior motive of the Protestant, which has nothing whatsoever to do with the water right transfer at issue. The Applicant objects to this interrogatory is over broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Moreover, finding, generating, collecting, or presenting the information would be difficult and unduly burdensome on the Applicant. Notwithstanding these objections and without waiving same, Jerome Cheese states that officials and representatives of the Idaho Dairymen's Association, the Idaho Department of Agriculture, and the Idaho Division of Environmental Quality may have information pertaining to this subject, and could be called as witnesses, if necessary and appropriate.

Item 61 (Interrogatory No. 40)

If the action referenced in Item 60 was limited to reducing the number of dairy cows because there is not enough available land for manure application and cost of transporting manure to other available land is prohibitive, would you support this action?

ANSWER:

Objection. This request documents the ulterior motive of the Protestant, which has nothing whatsoever to do with the water right transfer at issue. The Applicant objects to this interrogatory is over broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Moreover, finding, generating, collecting, or presenting the information would be difficult and unduly burdensome on the Applicant. Notwithstanding these objections and without waiving same, Jerome Cheese states that officials and representatives of the Idaho Dairymen's

Association, the Idaho Department of Agriculture, and the Idaho Division of Environmental Quality may have information pertaining to this subject, and could be called as witnesses, if necessary and appropriate.

Item 62 (Request for Admission No. 12)

Please admit that land application of cow manure and wastewater is polluting the Snake River Plain Aquifer.

ANSWER:

Objection. This request documents the ulterior motive of the Protestant, which has nothing whatsoever to do with the water right transfer at issue. The Applicant objects to this interrogatory is over broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Moreover, finding, generating, collecting, or presenting the information would be difficult and unduly burdensome on the Applicant. Notwithstanding these objections and without waiving same, Jerome Cheese states that officials and representatives of the Idaho Dairymen's Association, the Idaho Department of Agriculture, and the Idaho Division of Environmental Quality may have information pertaining to this subject, and could be called as witnesses, if necessary and appropriate.

Item 63 (Interrogatory No. 41)

If your response to Item 62 is anything other than an unqualified admission, please state each and every fact which you contend supports your claim that land application of cow manure and wastewater is not polluting the Snake River Plain Aquifer.

ANSWER:

Objection. This request documents the ulterior motive of the Protestant, which has nothing whatsoever to do with the water right transfer at issue. The Applicant objects to this interrogatory is over broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Moreover, finding, generating, collecting, or presenting the information would be difficult and unduly burdensome on the Applicant. Notwithstanding these objections and without waiving same, Jerome Cheese states that officials and representatives of the Idaho Dairymen's Association, the Idaho Department of Agriculture, and the Idaho Division of

Environmental Quality may have information pertaining to this subject, and could be called as witnesses, if necessary and appropriate.

Item 64 (Request for Production No. 12)

If your response to Item 62 is anything other than an unqualified admission, please produce any and all documents which bear upon or provide evidence with respect to your proof that land application of cow manure and wastewater is not polluting the Snake River Plain Aquifer.

ANSWER:

Objection. This request documents the ulterior motive of the Protestant, which has nothing whatsoever to do with the water right transfer at issue. The Applicant objects to this interrogatory is over broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Moreover, finding, generating, collecting, or presenting the information would be difficult and unduly burdensome on the Applicant. Notwithstanding these objections and without waiving same, Jerome Cheese states that officials and representatives of the Idaho Dairymen's Association, the Idaho Department of Agriculture, and the Idaho Division of Environmental Quality may have information pertaining to this subject, and could be called as witnesses, if necessary and appropriate.

Item 65 (Request for Admission No. 13)

Please admit that trends in scientific studies are viable indicators of changing conditions.

ANSWER:

It is admitted that trend data may be "viable indicators" in some instances, depending on the quality of the data, analysis and other factors. The statement is denied to the extent it is offered as a statement of absolute or universal applicability.

Item 66 (Interrogatory No. 42)

If your response to Item 65 is anything other than an unqualified admission, please state each and every fact which you contend supports your claim that trends in scientific

studies are not viable indicators of changing conditions.

ANSWER:

Please see response to Item 65. The Applicant is unable to make a more detailed response, as the Protestant has not identified which trend or scientific study he has in mind.

Item 67 (Request for Production No. 13)

If your response to Item 65 is anything other than an unqualified admission, please produce any and all documents which bear upon or provide evidence with respect to your proof that trends in scientific studies are not viable indicators of changing conditions.

ANSWER:

Please see response to item 66.

Item 68 (Request for Admission No. 14)

Please admit that you trust the scientific integrity of the United States Geological Survey.

ANSWER:

Denied. Although the Applicant has no reason to doubt the integrity of this governmental body, the statement is too vague and general to enable an unqualified admission. Moreover, the Protestant has failed to identify which study, report, finding, or conclusion of the U.S.G.S. it is speaking of.

Item 69 (Interrogatory No. 43)

If your response to Item 68 is anything other than an unqualified admission, please state each and every fact which you contend supports your claim that the U.S.G.S.'s scientific integrity should be suspect.

ANSWER:

Applicant has no basis on which to doubt the integrity of the U.S.G.S. That does not mean that the Applicant agrees with every study, report, finding, or conclusion of the U.S.G.S.

Item 70 (Request for Production No. 14)

If your response to Item 68 is anything other than an unqualified admission, please produce any and all documents which bear upon or provide evidence with respect to your proof that the U.S.G.S.'s scientific integrity should be suspect.

ANSWER:

We have no documents to produce in this regard.

Item 71 (Request for Admission No. 15)

Please admit that Jerome Cheese Company maintains an unsafe work environment according to standards set by O.S.H.A.

ANSWER:

Objection. This request is over broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Moreover, finding, generating, collecting, or presenting the information would be difficult and unduly burdensome on the Applicant. Notwithstanding these objections and without waiving same, Jerome Cheese denies the request for admission.

Item 72 (Interrogatory No. 44)

If your response to Item 71 is anything other than an unqualified admission, please state each and every fact which you contend supports your claim that Jerome Cheese maintains a safe work environment according to standards set by O.S.H.A.

ANSWER:

Objection. This request is over broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Moreover, finding, generating, collecting, or presenting the information would be difficult and unduly

burdensome on the Applicant.

Item 73 (Request for Production No. 15)

If your response to Item 71 is anything other than an unqualified admission, please produce any and all documents which bear upon or provide evidence with respect to your proof that Jerome Cheese maintains a safe work environment according to standards set by O.S.H.A. Please include a list of all violations issued by O.S.H.A.

ANSWER:

Objection. This request is over broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Moreover, finding, generating, collecting, or presenting the information would be difficult and unduly burdensome on the Applicant.

Item 74 (Request for Admission No. 16)

This request is directed specifically to Givens Pursley. Please admit that your firm never uses electronic means [in] conferences, depositions or taking of testimony.

ANSWER:

Objection. Givens Pursley LLP is not a party to this administrative litigation and is not subject to interrogatories or similar discovery. Moreover, the question is not reasonably calculated to lead to the introduction of admissible evidence. Notwithstanding such objections and without waiving same, Givens Pursley LLP denies the request for admission.

Item 75 (Interrogatory No. 45)

If your response to Item 74 is anything other than an unqualified admission, please provide the approximate number of electronically held conferences, depositions or taking of testimony your firm handled in 1998.

Objection. Givens Pursley LLP is not a party to this administrative litigation and is not subject to interrogatories or similar discovery. Moreover, the question is not reasonably calculated to lead to the introduction of admissible evidence. Moreover,

finding, generating, collecting, or presenting the information would be difficult and unduly burdensome on Givens Pursley LLP. Notwithstanding such objections and without waiving same, Givens Pursley LLP states that it frequently employs electronic means for procedural conferences. It occasionally employs electronic means for oral arguments. It never (to the undersigned counsel's recollection) has employed electronic means for a hearing involving the interrogation of witnesses and the offering of evidence.

Dated this 9th day of June, 1999.

GIVENS PURSLEY LLP

By _____
Christopher H. Meyer

Attorneys for Applicant
Jerome Cheese

VERIFICATION

J. Rex Minchey, acting under authority of and on behalf of Jerome Cheese, being first duly sworn upon oath, deposes and says:

Jerome Cheese is the Applicant in the above-captioned matter. I serve as Maintenance Manager for Jerome Cheese and am authorized by Jerome Cheese to respond to all discovery in this matter on behalf of Jerome Cheese. I have read the foregoing requests and responses. The statements contained therein are true to the best of my knowledge and belief.

Dated: June 9 1999

J. Rex Minchey
Maintenance Manager
Jerome Cheese

STATE OF IDAHO)
) ss.
COUNTY OF JEROME)

On this 9 day of June, 1999, before me, a Notary Public, personally appeared J. Rex Minchey, known or identified to me to be the Maintenance Manager of Jerome Cheese, whose name is subscribed to the foregoing instrument on behalf of said corporation, and acknowledged to me that s/he is authorized to and did execute the same on behalf of said corporation.

NOTARY PUBLIC for Idaho
Residing at Jerome, Idaho
My commission expires: 3/13/2003

MICROFILMED
JUL 26 2000

CERTIFICATE OF SERVICE

I hereby certify that on June 9th, 1999 I caused to be served a true and correct copy of the foregoing to each of the persons named below by the method indicated below each of their names.

Mr. William K. Chisholm
19073 E. Hwy. 30
Buhl, ID 83316
☑ U.S. Mail ☐ Fax ☐ By hand ☐ Overnight

Mr. Lee J. Halper
331 South 230 West
Jerome, ID 83338
☑ U.S. Mail ☐ Fax ☐ By hand ☐ Overnight

Mr. Michael Ihler
2635-A East 3100 North
Twin Falls, ID 83301
☑ U.S. Mail ☐ Fax ☐ By hand ☐ Overnight

Ms. Darcy Thornborrow
1676 East 3800 North
Buhl, ID 83316
☑ U.S. Mail ☐ Fax ☐ By hand ☐ Overnight

Christopher H. Meyer

MICROFILMED
JUL 26 2000

ORIGINAL

Christopher H. Meyer, Esq.
Michael C. Creamer, Esq.
GIVENS PURSLEY LLP
277 North 6th Street, Suite 200
P.O. Box 2720
Boise, Idaho 83701-2720
Counsel for Jerome Cheese Company

chm@givenspursley.com
mcc@givenspursley.com
Office: 208-388-1200
Fax: 208-388-1300

BEFORE THE
IDAHO DEPARTMENT OF WATER RESOURCES

In the Matter of Application For Transfer No. 5436 (Water Right No. 35-08606) Jerome Cheese, Applicant Bill Chisholm, Lee Halper, Michael Ihler, Darcy Thornborrow, Protestants	**NOTICE OF APPEARANCE**

RECEIVED
JUN [illegible] 1999
Department of Water Resources
Southern Region

TO: IDAHO DEPARTMENT OF WATER RESOURCES AND THE PROTESTANTS IN THE ABOVE-CAPTIONED MATTER:

PLEASE take notice that Christopher H. Meyer and Michael C. Creamer of the firm Givens Pursley LLP hereby enter their appearance as attorneys of record for the Applicant, Davisco Foods International, Inc., dba Jerome Cheese, in the above-captioned matter.

Pursuant to Procedure Rule 203 (IDAPA 37.01.01.203), Procedure Rule 302 (IDAPA 37.01.01.302), and Procedure Rule 303 (IDAPA 37.01.01.303), all parties are hereby notified and required to serve any subsequent filings in this matter upon the

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2000

above-named counsel.

DATED this 7th day of June, 1999.

GIVENS PURSLEY LLP

By _____
Christopher H. Meyer

Attorneys for Applicant
Jerome Cheese

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JUL 26 2000

CERTIFICATE OF SERVICE

I hereby certify that on June 7, 1999 I caused to be served a true and correct copy of the foregoing to each of the persons named below by the method indicated below each of their names.

Mr. Bill Chisholm
19073 E. Hwy. 30
Buhl, ID 83316
☑ U.S. Mail ☐ Fax ☐ By hand ☐ Overnight

Copy to:
Mr. Karl J. Dreher
Director
Idaho Department of Water Resources
1301 N. Orchard St.
Statehouse Mail
Boise, ID 83720-9000
☑ U.S. Mail ☐ Fax ☐ By hand ☐ Overnight

Mr. Lee Halper
331 South 230 West
Jerome, ID 83338
☑ U.S. Mail ☐ Fax ☐ By hand ☐ Overnight

Mr. Michael Ihler
2635-A East 3100 North
Twin Falls, ID 83301
☑ U.S. Mail ☐ Fax ☐ By hand ☐ Overnight

Original to:
Allen D. Merritt, P.E.
Southern Regional Manager
Idaho Department of Water Resources
1341 Fillmore St., Ste. 200
Twin Falls, ID 83301-3380
☑ U.S. Mail ☐ Fax ☐ By hand ☐ Overnight

Ms. Darcy Thornborrow
1676 East 3800 North
Buhl, ID 83316
☑ U.S. Mail ☐ Fax ☐ By hand ☐ Overnight

Christopher H. Meyer

MICROFILMED
JUL 26 2000

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098
Phone: (208) 327-7900 FAX: (208) 327-7866

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

June 7, 1999

Lee Halper
331 S 230 W
Jerome, ID 83338

RE: APP. FOR TRANSFER NO. 5401 IN THE NAME OF JEROME CHEESE CO.

Dear Mr. Halper:

On June 3, 1999, I received a message you sent by E-Mail which you have termed a Second Motion to Issue Subpoenas. In the E-Mail message, you generally describe why a subpoena should be issued to each proposed witness. The E-Mail transmission can not be treated as a Motion. IDAPA Rule 37.01.01300 (Procedure Rule 300), however, provides that certain documents can be filed with the department by FAX, if the original is mailed the next working day.

In order for the department to consider a motion in connection with the requested subpoenas, you need to submit a motion as required in the Rules of Procedure. If you make such a submittal, also recognize that you have requested the issuance of Duces Tecum Subpoenas in which you request that the recipients are to bring with them

> "all documents, reports, studies, fact sheets and the like that pertain to the quality and quantity of groundwater and surface water in the Snake Plain Aquifer Region of Idaho."

There likely are volumes of information which fit within this description and have nothing to do with the protested applications for transfer. I do not plan to receive into evidence proposed exhibits which are not relevant to the proceeding. Hence, in order for the department to further consider the issuance of subpoenas, you need to specifically identify the documents, reports, studies and fact sheets that you are seeking from each party and a detailed reason for the request.

Sincerely,

L. GLEN SAXTON
Hearing Officer

c: Chris Meyer, Michael Ihler
Bill Chisholm, Darcy Thornborrow
Allen Merritt

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JUL 2 6 2000

Young, Norm

From: slvrchst@magiclink.com
Sent: Wednesday, June 02, 1999 9 04 AM
To: norm young/l. glen saxton; chris meyer, bill chisholm; allen merritt
Subject: second motion to issue subpoenas

BEFORE THE IDAHO DEPARTMENT OF WATER RESOURCES

In the Matter of Application For Transfer No 5401 (Water Right No. X36-07337E)

Jerome Cheese Company,
Applicant

William K Chisholm,
Lee J. Halper,
Protestants

COMES NOW Protestant Lee Halper and issues his Second Motion to Issue Subpoenas

On June 1, 1999 Protestant hand delivered prepared for signature Subpoenas to the Department wherein he found for the first time that his Motion to Issue Subpoenas had been denied for stated reasons. Protestant seeks to remedy those stated reasons through this Second Motion by identifying reasons each Witness must be Subpoenaed, their relevant knowledge and testimony to be elicited
Generally, all issues of 42-222 can be adequately addressed by all these witnesses to some degree. As to the issue of a one day hearing, I have no control over the length or scheduling of this..

John Sandy He is the original holder of the proposed water right to be transferred. His listing as a Witness on Applicant's list does not mean he will appear and his testimony as to certain allegations made by Applicant are critical to those allegations that appear in the Contractual agreement between these two parties
Laird Noh His knowledge of the history and the responsibilities of the Legislature and IDWR in matters such as this is without equal and can impart great meaning to the 'public interest' aspect of this protest
Sonny Buhider PhD in Chemistry and has a long history of experience with water quality and impacts of influences and is an 'expert' witness. As he works for DEQ, a subpoena is required to not taint the Department's reputation with possible bias allegations (This also applies to all other listed Government employees regardless of the Department)
Mike McMasters Long time head field man in Twin Falls DEQ and his wide range of experience and knowledge of local history makes him an 'expert' witness
Mike Echeverri Also Twin Falls DEQ with his own area of water quality expertise
Brad Gilmore Twin Falls City Environmental Engineer As he coordinates municipal duties with State Agencies such as DEQ, his knowledge as an expert covers this field of experience
Marv Patten Chief of the Dairy Bureau of I S D A and as part of the 'public interest' issue involved in this protest has to do with dairies, his knowledge of this is vital to this concern
Lewis Eilers. As head lobbyist for the Dairy Industry, his knowledge overlaps that of Mr. Pattens and completes the picture of the Dairy Industry.
Jim Stanton. His confirmation of a written report and the resulting history and outcome of that history is necessary for first hand confirmation of Department action on this water right
Donna West As DEQ's water quality specialist, her testimony as to the responsibilities, funding, trends, future policies, etc. are vital to 'public interest' issues
Stan Clark. Though I have tried to discover through letters and emails what the Governor's policies and future projections for water policies

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JUN 2 2 2000

are, I have not been responded to and the Chief Representative of the People's water policies are of utmost importance to the future of our State
Mike Mitchell As chief engineer for ISDA, his knowledge and experience in the practical matters that concern the 'nuts and bolts' of the dairy industry is essential for his expertise and the public interest issues.
Kenneth Neely and Janet Crockett As IDWR water experts, their testimony to explain IDWR studies and reports is essential to the public interest aspect of this protest
Al Lance. As Attorney General, his opinion on applicable State Law and interpretations are necessary to show problems with certain statutes and the public interest aspect of this protest
Scott Bybee His work with the City of Jerome gives close local experience with the affected Municipality and the history involved
Marj Schmidt Jerome City Councilwoman whose long time experience with the City and the Applicant will shed practical and political light on public interest issues

I apologize for my inexperience in these matters and for my 'shotgun' approach used before Please note I have pared my list to people I think absolutely essential to my Protest.

For these reasons I respectfully request the Department sign and issue Subpoenas for the above named parties for the scheduled June 8, 1999 hearing at 9 00 AM at the Obenchain Building in Twin Falls, Idaho.

Dated June 2, 1999
Lee Halper

CERTIFICATE OF SERVICE

I hereby certify that on June 2, 1999 I caused to be served a true and correct copy of the foregoing to each of the persons named below by the method indicated below each of their names

Mr William K Chisholm
19073 E. Hwy 30
Buhl, ID 83316
email chisholm@rmci net
X Email

Allen D Merritt, P E
Southern Regional Manager
Idaho Department of Water Resources
1341 Fillmore St , Ste. 200
Twin Falls, ID 83301-3380
X Email

Mr. L Glen Saxton
Idaho Department of Water Resources
1301 N Orchard
Statehouse Mail
Boise, ID 83720-9000
X Email

MICROFILMED
JUL 2 6 2000

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098
Phone: (208) 327-7900 FAX: (208) 327-7866

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

RECEIVED
JUN 08 1999
Department of Water Resources
Southern Region

June 4, 1999

RE: In the Matter of Application for Transfer No. 75401 in the name of Jerome Cheese Factory

75436

Dear Interested Party:

I have enclosed a copy of the Notice of Rescheduled Hearing, issued in connection with above referenced transfer application.

If you have any questions concerning the enclosed document, please contact me directly at (208)327-7953.

Sincerely,

Julie L. Yarbrough

JULIE L. YARBROUGH, Administrative Assistant
Water Allocation Bureau

Enclosure

cc: Allen Merritt - IDWR Southern

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

RECEIVED
JUN 08 1999
Department of Water Resources
Southern Region

IN THE MATTER OF APPLICATION FOR)
TRANSFER NO. 5401 AND 5436 IN THE)
NAME OF JEROME CHEESE COMPANY)
)

NOTICE OF RESCHEDULED HEARING

The Department of Water Resources (department) has scheduled a hearing in connection with Transfer No. 5401 to be held on June 8, 1999, in Twin Falls, Idaho.

On June 3, 1999, the parties to protested Application for Transfer Nos. 5401 and 5436 agreed that the hearing on June 8, 1999, should be canceled and that a combined hearing involving both applications for transfer should be held in July 1999.

ORDER

By service of this Notice of Rescheduled Hearing, the hearing presently scheduled for June 8, 1999 is **VACATED** and is **RESCHEDULED** to include both Application for Transfer Nos. 5401 and 5436 as follows:

Date:	July 27 and 28, 1999
Time:	9:00 a.m.
Place:	Obenchain Community Room 264 Main Ave South Twin Falls, ID

The hearing will be held in accordance with provisions of Chapters 2 and 17, Title 42, Chapter 52, Title 67, Idaho Code, and the adopted Rules of Procedure of the department. A copy of the rules may be obtained from the department upon request. The presiding officer at the hearing will be L. Glen Saxton.

If you plan to offer exhibits for the record, note that IDAPA Rule of Procedure 37.01.01606 requires that you provide a copy of exhibits to each party and to the presiding officer.

The hearing will be conducted in a facility which meets the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the hearing, please advise the department within (10) days prior to the hearing. Parties to the matter will have the opportunity to respond and present information and argument on all issues involved.

Dated this 4th day of June, 1999.

L. Glen Saxton

L. GLEN SAXTON, Hearing Officer

CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that on this 4th day of June, 1999, the above and foregoing document was served upon the following by placing a copy of the same in the United States Mail, postage prepaid and properly addressed to the following:

VIA U.S. MAIL & FACSIMILE

CHRISTOPHER H MEYER
MICHAEL C CREAMER
GIVENS PURSLEY LLP
277 N 6TH ST STE 200
PO BOX 2720
BOISE ID 83701-2720

LEE HALPER
331 S 230 W
JEROME ID 83338

VIA U.S. MAIL

BILL CHISHOLM
19073 E HWY 30
BUHL ID 83316

MICHAEL IHLER
2635A E 3100 N
TWIN FALLS ID 83301

DARCY THORNBORROW
1676 E 3800 N
BUHL ID 83616

Julie L. Yarborough

JULIE L. YARBOROUGH, Administrative Assistant
Water Allocation Bureau

FAX COVER SHEET

DATE: Monday, June 7, 1999

PAGES (INCLUDING COVER): 1

ORIGINAL TO FOLLOW: NO

RE: Jerome Cheese Company
Water Transfer Nos. 5401 and 5436
Our File No. 5472-1

From:
CHRISTOPHER H. MEYER
GIVENS PURSLEY LLP
Suite 200, Park Place
277 North Sixth Street
Post Office Box 2720
Boise, Idaho 83701-2720
Telephone: 208-388-1236
Fax: 208-388-1300
Email: chm@givenspursley.com

TO:

		Voice	Fax
Allen D. Merritt, P.E.	IDWR	208-736-3033	208-736-3037
Mr. L. Glen Saxton	IDWR	327-7955	327-7866

MESSAGE:

Gentlemen:
In response to Mr. Halper's email alleging that we are not complying with deadlines for discovery, we have repeatedly explained the deadlines to him, including at a conference in this office when Mr. Halper and Mr. Chisholm delivered their discovery responses. I do not understand why Mr. Halper is continuing to have difficulty understanding the fifteen day rule.

In any event, we are finalizing our responses to Mr. Chisholm's discovery today, and expect to complete our responses to Mr. Halper's discovery tomorrow. Both are within the deadlines established.

— Chris

cc: Clients
Consultants
Protestants

If this fax does not transmit fully or is difficult to read, please contact me or my secretary, Barbara Feasel, at (208) 388-1227.

CONFIDENTIALITY NOTICE

This facsimile may contain confidential information that is protected by the attorney-client or work product privilege. It is intended only for the use of the individual(s) named above. If you are not a named recipient or an employee responsible for delivering the facsimile, you are instructed not to deliver, distribute or copy this facsimile, nor should you disclose its contents or take any action in reliance on the information it contains. If you have received this facsimile in error, please notify us immediately by telephone to arrange for the return of the transmitted documents to us. Thank you

State of Idaho
DEPARTMENT OF WATER RESOURCES
1341 Fillmore Street, Suite 200, Twin Falls, ID 83301-3380
Phone: (208) 736-3033 FAX: (208) 736-3037

SOUTHERN REGION

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

June 4, 1999

ATTN SANDI STANDLEY
OBENCHAIN COMMUNITY ROOM
264 MAIN AVE SOUTH
TWIN FALLS ID 83301

Dear Sandi:

This letter is to confirm the reservation of the Obenchain Main Avenue Community Room for Tuesday & Wednesday on **July 27 and July 28, 1999** from 8:00 a.m.-5:00 p.m.

If you have any questions please feel free to contact me or Allen Merritt, the Southern Regional Office Manager.

Thank you very much for your assistance in this matter.

Very truly yours,

Mary Baldwin
Administrative Assistant

MICROFILMED
JUL 26 2000

FAX COVER SHEET

DATE: Thursday, June 3, 1999

PAGES (INCLUDING COVER): 8

ORIGINAL TO FOLLOW: yes

RE: Jerome Cheese Company
Water Transfer Nos. 5401 and 5436
Our File No. 5472-1

From:
CHRISTOPHER H. MEYER
GIVENS PURSLEY LLP
Suite 200, Park Place
277 North Sixth Street
Post Office Box 2720
Boise, Idaho 83701-2720
Telephone: 208-388-1236
Fax: 208-388-1300
Email: chm@givenspursley.com

TO:

		Voice	Fax
Allen D. Merritt, P.E.	IDWR	208-736-3033	208-736-3037
Mr. L. Glen Saxton	IDWR	327-7955	327-7866

MESSAGE:

Please see attached.

Chris

RECEIVED
JUN 04 1999
Department of Water Resources
Southern Region

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JUL 26 2000

If this fax does not transmit fully or is difficult to read, please contact me or my secretary, Barbara Feasel, at (208) 388-1227.

CONFIDENTIALITY NOTICE

This facsimile may contain confidential information that is protected by the attorney-client or work product privilege. It is intended only for the use of the individual(s) named above. If you are not a named recipient or an employee responsible for delivering the facsimile, you are instructed not to deliver, distribute or copy this facsimile, nor should you disclose its contents or take any action in reliance on the information it contains. If you have received this facsimile in error, please notify us immediately by telephone to arrange for the return of the transmitted documents to us. Thank you.

GIVENS PURSLEY LLP

LAW OFFICES
277 North 8th Street, Suite 200
PO Box 2720, Boise, Idaho 83701
TELEPHONE: 208 388-1200
FACSIMILE: 208 388-1300

DIRECT DIAL: 208 388-1236
EMAIL: chrn@givenspursley.com

Gary G. Allen
Christopher J. Beeson
Michael C. Creamer
Thomas E. Dvorak
Roy Lewis Eiguren
Jeffrey C. Fereday
L. W. Grant III
Richard W. Jankowski
Kari T. Klein
David R. Lombardi
Kimberly D. Maloney
Kenneth R. McClure
Cynthia A. Melillo
Christopher H. Meyer
L. Edward Miller
Patrick J. Miller
Judson B. Montgomery
Angela K. Nelson
W. Hugh O'Riordan
Kenneth J. Pursley
Conley Ward
Stephanie C. Westermeier
Robert B. White
Raymond D. Givens
James A. McClure
of counsel

June 3, 1999

Via Facsimile and U.S. Mail

Allen D. Merritt, P.E.
Southern Regional Manager
Idaho Department of Water Resources
1341 Fillmore St., Ste. 200
Twin Falls, ID 83301-3380

Mr. L. Glen Saxton
Hearing Officer
Idaho Department of Water Resources
1301 N. Orchard
Statehouse Mail
Boise, ID 83720-9000

Re: Jerome Cheese Company
Water Transfer Nos. 5401 and 5436
Our File No. 5472-1

Dear Messrs. Merritt and Saxton:

We have reached an agreement among each of the four Protestants and Jerome Cheese Company concerning scheduling of the hearings in these matters. The agreement calls for continuing the hearing currently scheduled for June 8, 1999. Instead, a consolidated hearing would be held for both transfer applications on July 27 and 28, 1999 in Twin Falls.

In addition, the parties have entered two stipulations:

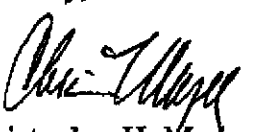
STIPULATION #1: Jerome Cheese Company acknowledges, agrees and stipulates, per request of the Protestants, that the hearing to be reset for July 27 and 28, 1999 is "consolidated" only for purposes of convenience and efficiency. Despite the fact that both transfer applications (Nos. 5401 and 5436) will be heard on the same day, these are separate applications subject to separate and independent consideration and decision by the Department of Water Resources.

STIPULATION #2: Jerome Cheese Company acknowledges that Protestant Darcy Thornborrow will be out of the country and unavailable to attend the consolidated hearing

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JUL 26 2000

on July 27 and 28, 1999. Jerome Cheese Company agrees and stipulates that Ms. Thornborrow may be represented at the hearing by a replacement or representative of her choosing. Ms. Thornborrow's replacement or representative is not required to be an attorney, but may be any person she selects. The person selected may serve either as a representative for Ms. Thornborrow or as a substitute Protestant. Jerome Cheese waives any objection to this arrangement.

Sincerely,



Christopher H. Meyer

Enclosures:

Copies of four letters each countersigned by one of the four Protestants agreeing to the consolidation as described.

cc: Charles E. Brockway, Brockway Engineering
William K. Chisholm, Protestant
Michael C. Creamer, Givens Pursley
Jon Davis, Jerome Cheese Company
Lee J. Halper, Protestant
Craig D. Hobdey, Hobdey & Hobdey
Paul K. Hunter, EnviroSearch International
Michael Ihler, Protestant
Richard K. Kelsey, EnviroSearch International
J. Rex Minchey, Jerome Cheese Company
Darcy Thornborrow, Protestant

CHM:baf
S:\Clients\5472\1\Corr\1999-06-03 CHM Ltr to G.Saxton & A.Merritt - Re consolidation agreement.wpd

MICROFILMED
JUL 26 2000

GIVENS PURSLEY LLP

LAW OFFICES
277 North 6th Street, Suite 200
PO Box 2720, Boise, Idaho 83701
TELEPHONE: 208 388-1200
FACSIMILE: 208 388-1300

DIRECT DIAL: 208 388-1230
EMAIL: chris@givenspursley.com

Gary G. Allen
Christopher A. Bates
Michael G. Crumpton
Thomas E. Dvorak
Jon Louis Eigsti
Jeffrey C. Fereday
L. W. Grant II
Richard W. Jodoin
Earl T. Klein
David R. Leonard

Kimberly D. Maloney
Kenneth R. McClain
Dennis A. Moeller
Christopher M. Moore
L. Edward Miller
Patrick J. Miller
Judson B. Montgomery
Angela Y. Nelson
W. Hugh O'Riordan
Kenneth L. Pursley

Shelley Ward
Charmaine C. Weaverstock
Robert B. White

Raymond D. Givens
Dennis A. Matthew
OF COUNSEL

Via Facsimile

June 2, 1999

Mr. William K. Chisholm
19073 E. Hwy. 30
Buhl, ID 83316

Mr. Lee J. Halper
331 South 230 West
Jerome, ID 83338

Mr. Michael Ihler
2635-A East 3100 North
Twin Falls, ID 83301

Darcy Thornborrow
1676 East 3800 North
Buhl, ID 83316

RECEIVED
JUN 02 1999
Givens Pursley, LLP

Re: Jerome Cheese Company
Water Right Transfers Nos. 5401 & 5436
Our File No. 5472-1

Dear Mr. Chisholm, Mr. Halper, Mr. Ihler and Ms. Thornborrow:

I am writing to confirm our agreement to postpone the hearing in Water Right Transfer No. 5401 currently set for next Tuesday, June 8, 1999, and to consolidate the hearings on Transfer Nos. 5401 and 5436 to a single hearing to be conducted on July 27 and 28, 1999 in Twin Falls, Idaho.

At the July 27 and 28 hearing, testimony and evidence would be received on both water rights transfers. Some evidence would relate to just one or the other transfer. Some would serve in both matters. This will eliminate duplication of effort.

It is understood that the agreement to postpone the June 8, 1999 hearing is premised on the ability to conduct both hearings in July and that the parties will be bound by this.

If this is consistent with your understanding, please sign below and return to me via fax machine.

I concur with the stipulation that while the hearing is consolidated the decisions are still separate acts

MICROFILMED
JUN 26 2000

Sincerely,

Christopher H. Meyer
For Jerome Cheese Company

CHM:baf

AGREEMENT

I have read the letter above, and agree to the rescheduling as described.

Dated: June 2, 1999 Sign here: William K Chisholm

S:\Clients\6472\1\Corr\1999-06-01 CHM Ltr to Participants - Re stipulation to reschedule.wpd

Print name here: William K. Chisholm

MICROFILMED
JUL 26 2000

Sincerely,

Christopher H. Meyer
For Jerome Cheese Company

CHM:baf

AGREEMENT

I have read the letter above, and agree to the rescheduling as described.

Dated: 6-2-99 Sign here: Michael W Ihler

S:\Clients\4720\Corr\1999-06-02 CHM Ltr to Protestants - Re stipulation to reschedule.wpd

Print name here: Michael W Ihler

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JUN 02 1999
Givens Pursley, LLP

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JUN 26 2000

Mr. William K. Chisholm
Mr. Lee J. Halper
Mr. Michael Ihler
Ms. Darcy Thornborrow
June 3, 1999
Page 2

Post-it® Fax Note 7671	Date 6/3/99	# of pages ▶ 1
To Barbara	From	
Co./Dept.	Co.	
Phone # 1300	Phone #	
Fax # 208-388-1286	Fax # 208-736-4712	

Christopher H. Meyer
For Jerome Cheese Company

CHM:baf

AGREEMENT

I have read the letter above, and agree to the rescheduling as described.

Dated: 6/3/99 Sign here: D M Thornborrow

S:\Clients\4721\Corr\1999-06-03 CHM Ltr to Prosecutor - Re Stipulation to reschedule.wpd

Print name here: D. M. Thornborrow

RECEIVED
JUN 03 1999
Givens Pursley, LLP

MICROFILMED
JUL 26 2000

From: <slvrchst@magiclink.com>
To: "norm young/l. glen saxton" <nyoung@idwr.state.id.us>, chris meyer <chm@givenspursley.com>, bill chisholm <chisholm@rmci.net>, allen merritt <amerritt@idwr.state.id.us>
Date: 6/2/99 12:45PM
Subject: CONSOLIDATION

Bill is alerting Mr. Ihler and Ms. Thornborrow and will get them to sign or write and send an agreement to this hearing date. I will print and send this via regular mail.
I, Lee Halper, Protestant in the matter of Application for Transfer No. 5401 do agree to consolidate this transfer protest with my protest of Application for Transfer No. 5436 to a hearing date of July 27 and 28 with the understanding that the hearing will have 3 separate parts as follows:
1. issues that involve both transfers
2. issues that involve # 5401 only
3. issues that involve # 5436 only

It is also my understanding that the Department will make a determination on these Applications as separate matters and as such could approve each separately, deny each separately, deny one and approve the other, approve each with conditions, and the other possible combinations.
Dated this June 2, 1999
Lee Halper

MICROFILMED
JUL 26 2000

TO: File DATE: June 1, 1999

FROM: Jim Stanton

SUBJECT: App. for Transfer #5436, Jerome Cheese Co.

Today I spoke with Jerome City Manager John Cecil concerning this application. I told him that no conference or hearing had been set. He said that Jerome may want to protest this application, and I told him he could file to be an intervenor. He requested that he be notified of any hearings or conferences to be held on this matter; his address is 152 East Ave A, Jerome, 83338. Phone is 324-8189.

Per my conversation with Allen, I told Cecil that it was too late to protest the other Jerome Cheese transfer, but that he could sit in on the hearing on June 8. He could be called as a witness by a protestant.

MICROFILMED

JUL 2 6 2000

Merritt, Allen

From: slvrchst@magiclink.com
Sent: Thursday, May 20, 1999 1:42 PM
To: allen merritt
Subject: JEROME CHEESE T-5436

Allen, in regards your letter for a preconference hearing on this matter, any day from July 6 to July 16th is fine right now. Thanks, lee

MICROFILMED

JUL 2 6 2000

State of Idaho
DEPARTMENT OF WATER RESOURCES
1341 Fillmore Street, Suite 200, Twin Falls, ID 83301-3380
Phone: (208) 736-3033 FAX: (208) 736-3037

SOUTHERN REGION

May 19, 1999

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

RE: Matter of Protest of Transfer 5436 in the name of Jerome Cheese Company

Dear Party:

In a conference on May 4th for another matter some of the parties agreed in concept to schedule a pre-hearing conference for the matter of protest of Transfer No. 5436 in the latter part of May. I contacted the remaining parties by phone to see if schuduling the matter during that time period would work. I found the remaining parties had conflicts and now understand some of the other parties have conflicts.

The applicant wishes to schedule this matter for conference as soon possible as does the department. To facilitate scheduling the conference I request that all parties contact me by June 2nd and supply me with a list of dates from June 16th through July 16th in which they will be able to attend a conference in Twin Falls.

If you have questions please feel free to contact me at this office.

Respectfully,

Allen Merritt, PE
Southern Region Manager

MICROFILMED
JUL 26 2000

Magic Valley Maid

RECEIVED
MAY 18 19[illegible]
Department of Water Resources
Southern Region

RECEIVED
MAY 18 1999
Department of Water Resources
Southern Region

Jerome Cheese
P.O. Box 485
47 West 100 South
Jerome, Idaho 83338

Mr. Allen D. Merritt P.E.
Southern Region Manager
Department of Water Resources
1341 Fillmore Street, Suite 200
Twin Falls, Idaho 83301-3380

Date: May 14, 1999

Re: Request for pre-hearing conference concerning Notice of Protests to Application for Transfer no. 5436 (35-08606 Pt)

Dear Mr. Merritt:
I am writing in response to four protests filed against the above referenced application. I respectfully request a date at the earliest possible convenience for a pre-hearing. I have contacted or attempted to contact the parties who filed the protests. We verbally requested a pre hearing conference while attending the pre-hearing conference on May 4, 1999 for the protest of water transfer request 5401 (x36-07337f). I feel it would be in the best interest of all parties to meet in a pre-hearing conference.

Respectfully yours,
J. Rex Minchey
Maintenance Manager
Jerome Cheese Co.

MICROFILMED
JUL 25 2000

Merritt, Allen

From: Merritt, Allen
Sent: Monday, May 10, 1999 4:11 PM
To: 'chm@givenspursley.com'
Cc: Merritt, Allen
Subject: Pre-hearing conference for T5436

I have contacted the other two parties (Ihler & Thornborrow) by phone after our recent conference for T5401. I asked if 5/19, 20,21,25 & 26 were available for conference. Ihlers was flexible as long as set in afternoon. Thornborrow is tied up due to job at CSI until after school is out. Then she will be gone to Denver from for two days somewhere between 6/3 through 6/11. Today I received two e-mails from other parties which I have forwarded to you.

It appears that scheduling conference for this transfer will not be possible until after the hearing set for T5401. I plan on writing letter to all parties to identify available dates from June until Aug.

MICROFILMED

JUL 2 6 2000

Merritt, Allen

From: Young, Norm
Sent: Monday, May 10, 1999 9:49 AM
To: Merritt, Allen
Subject: RE: preconference hearing T5436

Allen: I have not responded to Mr. Halper's e-mail, because he has failed once again to properly include all the parties. My intent is to mail him a response advising him that he needs to follow the Rules of Procedure (Rule 300 in particular). Norm

MICROFILMED
JUL 2 6 2000

Merritt, Allen

From: slvrchst@magiclink.com
Sent: Friday, May 07, 1999 11:57 AM
To: allen merritt
Subject: preconference hearing T5436

Dear Allen,
I received your letter offering May 19-21 and 25 & 26th as dates for this preconference hearing. This will not work for me and I would prefer something in the last part of June. The date of May 24 was set for the exchange of the witness list on T5401 (Jerome Cheese #1) and this is contingent on timely resolution of the telecommunications decision and as I have not heard back from Norm Young after my formal request, and assuming that I hear back in the affirmative and that none of my witnesses is on a 2 week vacation, this leaves too little time to accomplish this so the Department's actions, or lack thereof, may necessitate a change of dates in this matter. Thank you. Lee Halper

MICROFILMED
JUL 26 2000

Merritt, Allen

From: chisholm@rmci.net
Sent: Monday, May 10, 1999 11:20 AM
To: amerritt@idwr.state.id.us
Subject: pre-conference hearing

Allen

Per the pre-conference hearing on water transfer #5436 to Jerome Cheese, the dates that fit me best are the 16th of June on to the 30th minus the 23rd which is already taken up with other matters. Given other issues and commitments an earlier date is not possible.

Bill Chisholm
19073E Hwy 30
Buhl, Idaho 83316
208-543-4418
chisholm@rmci.net

MICROFILMED
JUL 2 6 2000

State of Idaho
DEPARTMENT OF WATER RESOURCES
1341 Fillmore Street, Suite 200, Twin Falls, ID 83301-3380
Phone: (208) 736-3033 FAX: (208) 736-3037

SOUTHERN REGION

May 4, 1999

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

ATTN REX MICHEY
JEROME CHEESE CO
PO BOX 485
JEROME ID 83338

RE: APPLICATION FOR TRANSFER NO. 5436 - (35-08060D)

Dear Applicants:

Enclosed are copies of protests filed against the above referenced application. The Department suggests you contact the protestant(s) directly to determine the exact nature of the protest(s) and, if possible, to resolve the matter without action by the Department.

Please note that your application is considered a contested case and subject to the Rules of Procedure adopted by the Department.

If you need a copy of these rules, please contact this office. The Rules of Procedure are also available on the Internet by using the IDWR Homepage at the following electronic address:

http://www.idwr.state.id.us/apa/idapa37/0101.htm

The attachment to this letter describes the issues which the Department must consider in taking action on an application. It also gives a brief description of the conference and hearing procedure followed by the Department in resolving protested applications.

The protestants have been requested to submit their preference from the targeted dates of May 19 through 21, May 25 & May 26 for a Pre-hearing Conference.

If you have any questions or if this office can be of further assistance, please feel free to contact us.

Very truly yours,

Allen D. Merritt, P.E.
Southern Region Manager

AM:MB

Enclosure(s)

cc: Michael Creamer Esq

MICROFILMED

JUL 2 6 2000

State of Idaho
DEPARTMENT OF WATER RESOURCES
1341 Fillmore Street, Suite 200, Twin Falls, ID 83301-3380
Phone: (208) 736-3033 FAX: (208) 736-3037

SOUTHERN REGION

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

May 4, 1999

DARCY THORNBORROW
1676 E 3800 N
BUHL ID 83316

RE: APPLICATION FOR TRANSFER NO. 5436 - Jerome Cheese Co. (35-08060D)

Dear Protestant(s):

Your protest against the approval of the above referenced application has been received and a copy has been sent to the applicant with the suggestion that he contact you directly to determine the exact nature of the protest and, if possible, to resolve the matter without action by the Department.

Please note that the application is considered a contested case and subject to the Rules of Procedure adopted by the Department.

If you need a copy of these rules, please contact this office. The Rules of Procedure are also available on the Internet by using the IDWR Homepage at the following electronic address:

http://www.idwr.state.id.us/apa/idapa37/0101.htm

The attachment to this letter describes the issues which the Department must consider in taking action on an application. It also gives a brief description of the conference and hearing procedure followed by the Department in resolving protested applications.

This office is tentatively scheduling the matter of protest for a pre-hearing conference. **Please indicate your preference on the enclosed target May calendar page and return it at your earliest convenience.** All parties will be notified of the selected date.

If you have any questions or if this office can be of further assistance, please feel free to contact us.

Very truly yours,

Allen D. Merritt, P.E.
Southern Region Manager

AM:MB

Enclosure(s)

MICROFILMED

JUL 2 6 2000

State of Idaho
DEPARTMENT OF WATER RESOURCES
1341 Fillmore Street, Suite 200, Twin Falls, ID 83301-3380
Phone: (208) 736-3033 FAX: (208) 736-3037

SOUTHERN REGION

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

May 4, 1999

MICHAEL IHLER
2635-A E 3100 N
TWIN FALLS ID 83301

RE: APPLICATION FOR TRANSFER NO. 5436 - Jerome Cheese Co. (35-08060D)

Dear Protestant(s):

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Please note that the application is considered a contested case and subject to the Rules of Procedure adopted by the Department.

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Very truly yours,

Allen D. Merritt, P.E.
Southern Region Manager

AM:MB

Enclosure(s)

MICROFILMED

JUL 2 6 2000

State of Idaho
DEPARTMENT OF WATER RESOURCES
1341 Fillmore Street, Suite 200, Twin Falls, ID 83301-3380
Phone: (208) 736-3033 FAX: (208) 736-3037

SOUTHERN REGION

May 4, 1999

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

WILLIAM K CHISHOLM
19073 E HWY 30
BUHL ID 83316

RE: APPLICATION FOR TRANSFER NO. 5436 - Jerome Cheese Co. (35-08060D)

Dear Protestant(s):

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If you have any questions or if this office can be of further assistance, please feel free to contact us.

Very truly yours,

Allen D. Merritt, P.E.
Southern Region Manager

AM:MB

Enclosure(s)

MICROFILMED
JUL 26 2000

State of Idaho
DEPARTMENT OF WATER RESOURCES
1341 Fillmore Street, Suite 200, Twin Falls, ID 83301-3380
Phone: (208) 736-3033 FAX: (208) 736-3037

SOUTHERN REGION

May 4, 1999

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

LEE HALPER
331 S 230 W
JEROME ID 83338

RE: APPLICATION FOR TRANSFER NO. 5436 - Jerome Cheese Co. (35-08060D)

Dear Protestant(s):

Your protest against the approval of the above referenced application has been received and a copy has been sent to the applicant with the suggestion that he contact you directly to determine the exact nature of the protest and, if possible, to resolve the matter without action by the Department.

Please note that the application is considered a contested case and subject to the Rules of Procedure adopted by the Department.

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If you have any questions or if this office can be of further assistance, please feel free to contact us.

Very truly yours,

Allen D. Merritt, P.E.
Southern Region Manager

AM:MB

Enclosure(s)

MICROFILMED
JUL 26 2000

RECEIVED

MAY 12 1999

Department of Water Resources
Southern Region

DEPT. OF WATER RESOURCES
1341 Fillmore Street, Suite 200
Twin Falls, Idaho 83301-3380
Phone: (208) 736-3033
Fax: (208) 736-3037

NOTICE OF PROPOSED CHANGES TO WATER RIGHTS

NOTICE IS HEREBY GIVEN that applications have been filed with the Department of Water Resources for changes to a right. **PRESENTLY,** Water Right No. 35-08606 (6.07 cfs) with a priority date of 07/01/1985 is diverted from groundwater within NE1/4NW1/4, S16, T04S, R31E; Bingham County for irrigation of 303.5 acres within N1/2, S16, T04S, R31E; Bingham County. Transfer No. 5435 filed by **STEVE &/or DARLA WYBENGA,** 662 SPRING COVE RD, BLISS, IDAHO 83314, proposes to dry up 15 acres in Bingham County. The applicant wishes to use a combined 0.36 cfs for stockwater/commercial uses in an existing dairy in Gooding County. Transfer No. 5436 filed by **JEROME CHEESE CO.,** Attn: REX MINCHEY, P.O. Box 485; JEROME, ID. 83338 proposes to dry up 160 acres in Bingham County. The applicant wishes to use 3.20 cfs in a commercial cheese factory in Jerome County. Transfer No. 5437 filed by **JOE AGUEDA,** 326 E. 400 N.; JEROME, IDAHO 83338 proposes to dry up 15 acres in Bingham County. The applicant wishes to use a combined 0.30 cfs for stockwater/commercial uses in an existing dairy in Jerome County. Any protest against the proposed changes must be filed with the Department of Water Resources, Southern Region, 1341 Fillmore Street, Suite 200, Twin Falls, Idaho, 83301, together with a protest fee of $25.00 on or before May 3, 1999 to be considered by the Department in its decision to grant or deny any part of the proposed change. **(Each transfer requires a separate protest).** The protestant must also send a copy of the protest to the applicant.

KARL J. DREHER
Director

(4154)
Pub.: 4/15, 22

OK
NB
5/12/99

MICROFILMED

JUL 26 2000

Legals

AFFIDAVIT OF PUBLICATION

County of Bingham)
ss
State of Idaho)

I, Jacqueline Graham do solemnly swear that I am the Legal Coordinator of The Morning News, which is a daily newspaper of general circulation, published each day except Sunday at Blackfoot, Bingham County, Idaho, said newspaper having been so published at Blackfoot, aforesaid for more than one year past; that said newspaper heretofore complied with all the provisions of Chapter 154 of the Sessions Laws of Idaho of 1911, approved March 11, 1911, and duly designated, pursuant to law, a particular day of the week as the day on which legal notices required by law or by the order of any Court of competent jurisdiction within the State of Idaho shall be published to-wit: of each week; that the notice attached hereto and which is a part of this affidavit and part of the proof of publication was published in said issue of said newspaper 2 consecutive Weeks the first publication having been made on the 15th day of April 1999; and the last publication having been made on the 22nd day of April 1999; that said notice was published in the regular and entire issue of every number of the paper as aforesaid during the period and time of publication, and that notice was published, in the newspaper and not in a supplement.

Jacqueline Graham

On this 22nd day of April in the year of 1999, before me a Notary Public of the State, personally appeared Jacqueline Graham, known or identified to me to be the person whose name is subscribed to the within instrument, and being by me the first duly sworn, declared that the statements therein are true, and acknowledged to me that the executed the same.

NOTARY PUBLIC STATE OF IDAHO

Notary Public for the State of Idaho
Residing at Blackfoot, Idaho
My Commission Expires
June 19, 2004
Affidavit Processing Fee.....$5.00

3/96

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
NOTICE OF PROTEST

RECEIVED
APR 30 1999
Department of Water Resources
Southern Region

This form may be used to file a protest with the department under sections 42-108B, 42-203A, 42-203C, 42-211, 42-222 and 42-224, Idaho Code. The department will also accept a timely protest not completed on this form if it contains the same information.

1. Matter being protested Water Right Transfer #5436 Jerome Cheese Co
2. Name of protestant Lee Halper
3. Protestant's representative for service (If different than protestant)

4. Service mailing address 331 S. 230 W, Jerome, ID. 83338
5. Service telephone no. 208-324-2240
6. Basis of protest (including statement of facts and law upon which the protest is based)

Idaho Code - 42-222 #2 Enlargement of original use #3 Not in public interest #4 contrary to conservation of water resources within the State of Idaho

(additional pages may be attached to describe the nature of the protest)

7. What would resolve your protest?

I hereby, acknowledge that if I, or my designated representative, fails to appear at any regularly scheduled conference or hearing in the matter of which I have been notified at the address above, the department may issue a notice of proposed default against me in this matter for failure to appear. I also verify that I have served a copy of this protest upon the applicant.

Signed this 29th day of April, 1999.

PROTESTANT

PROTESTANT'S REPRESENTATIVE

MICROFILMED
JUL 26 2000

NOTE:

A protestant is required to timely file a protest with the department together with a $25.00 protest fee for each application being protested in order for the protestant to be considered a full party by the department. In addition, the department's Rule of Procedure, IDAPA 37.01.01203, requires a protestant to send a copy of a protest to the applicant.

INSTRUCTIONS

1. The matter being protested must be clearly identified. A typical matter is identified by the application number such as "Application for Permit No. _____ in the name of _____" or "Application for Transfer No. _____ in the name of _____."

2. Show the name of the protestant. Only one (1) protestant may be shown per protest form. If this protest form is signed by more than one person, the hearing officer will consider the first signer as the official protestant and the representative for service of documents.

3. If the protestant is represented by an attorney or other authorized representative, show the representative's name. The department then will serve documents on the representative and upon the protestant if specifically requested.

4. Show the address where the department is to serve the documents. This should be the address of the authorized representative unless the protestant does not designate a representative.

5. Show the telephone number of the authorized representative unless the protestant does not designate a service representative.

6. Specifically describe the nature of the protest.

7. Describe the relief being sought by the protestant.

FOR DEPARTMENT USE ONLY

Received by C. SKINNER Date 4/30/99 Time NOON

$25.00 fee Receipted by C. SKINNER # 5022089 Date 4/30/99

MICROFILMED
JUL 26 2000

3/96

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
NOTICE OF PROTEST

RECEIVED
MAY 03 1999
Department of Water Resources
Southern Region

This form may be used to file a protest with the department under sections 42-108B, 42-203A, 42-203C, 42-211, 42-222 and 42-224, Idaho Code. The department will also accept a timely protest not completed on this form if it contains the same information.

1. Matter being protested TRANSFER #5436
2. Name of protestant Darcy Thornborrow
3. Protestant's representative for service (If different than protestant)

4. Service mailing address 1676 E 3800 N Buhl ID 83316
5. Service telephone no. 543-5030
6. Basis of protest (including statement of facts and law upon which the protest is based)
Section - 42-222 Id. Code - All pertainent
as aspects of -

(additional pages may be attached to describe the nature of the protest)

7. What would resolve your protest? with drawal of transfer

I hereby, acknowledge that if I, or my designated representative, fails to appear at any regularly scheduled conference or hearing in the matter of which I have been notified at the address above, the department may issue a notice of proposed default against me in this matter for failure to appear. I also verify that I have served a copy of this protest upon the applicant.

Signed this 3RD day of May, 1999.

D M Thornborrow
PROTESTANT

PROTESTANT'S REPRESENTATIVE

MICROFILMED
JUL 26 2000

NOTE:

A protestant is required to timely file a protest with the department together with a $25.00 protest fee for each application being protested in order for the protestant to be considered a full party by the department. In addition, the department's Rule of Procedure, IDAPA 37.01.01203, requires a protestant to send a copy of a protest to the applicant.

INSTRUCTIONS

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6. Specifically describe the nature of the protest.

7. Describe the relief being sought by the protestant.

FOR DEPARTMENT USE ONLY

Received by AB Date 5/3/99 Time 3:15 pm

$25.00 fee Receipted by AB # SO 22099 Date 5/3/99

MICROFILMED

JUL 2 6 2000

3/96

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
NOTICE OF PROTEST

RECEIVED
APR 30 1999
Department of Water Resources
Southern Region

This form may be used to file a protest with the department under sections 42-108B, 42-203A, 42-203C, 42-211, 42-222 and 42-224, Idaho Code. The department will also accept a timely protest not completed on this form if it contains the same information.

1. Matter being protested Water Right Transfer # 5436 - Jerome, Cheer Co.
2. Name of protestant William K. Chisholm.
3. Protestant's representative for service (If different than protestant)

4. Service mailing address 19073 E Hwy 30, Buhl, Idaho 83316
5. Service telephone no. 208-543-4418
6. Basis of protest (including statement of facts and law upon which the protest is based)
Idaho Code 42.222. #2 Enlargement of original qty
3. Not in the public interest 4. contrary to conservation
of water resources with.. the State of Idaho

(additional pages may be attached to describe the nature of the protest)

7. What would resolve your protest?

I hereby, acknowledge that if I, or my designated representative, fails to appear at any regularly scheduled conference or hearing in the matter of which I have been notified at the address above, the department may issue a notice of proposed default against me in this matter for failure to appear. I also verify that I have served a copy of this protest upon the applicant.

Signed this 29th day of April, 19 99.

Wm K Chisholm

PROTESTANT

PROTESTANT'S REPRESENTATIVE

MICROFILMED
JUL 26 2000

NOTE:

A protestant is required to timely file a protest with the department together with a $25.00 protest fee for each application being protested in order for the protestant to be considered a full party by the department. In addition, the department's Rule of Procedure, IDAPA 37.01.01203, requires a protestant to send a copy of a protest to the applicant.

INSTRUCTIONS

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6. Specifically describe the nature of the protest.

7. Describe the relief being sought by the protestant.

FOR DEPARTMENT USE ONLY

Received by A. SKINNER Date 4/30/99 Time NOON

$25.00 fee Receipted by A. SKINNER # 502208 Date 4/30/99

MICROFILMED
JUL 26 2000

3/96

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
NOTICE OF PROTEST

RECEIVED
APR 29 1999
Department of Water Resources
Southern Region

This form may be used to file a protest with the department under sections 42-108B, 42-203A, 42-203C, 42-211, 42-222 and 42-224, Idaho Code. The department will also accept a timely protest not completed on this form if it contains the same information.

1. Matter being protested TRANSFER # 5436
2. Name of protestant Michael Ihler
3. Protestant's representative for service (If different than protestant)

4. Service mailing address 2635-A East 3100 North, Twin Falls, Id 83301
5. Service telephone no. 734-7930
6. Basis of protest (including statement of facts and law upon which the protest is based)
Not In The Publics Interest

(additional pages may be attached to describe the nature of the protest)

7. What would resolve your protest? withdrawel of Transfer

I hereby, acknowledge that if I, or my designated representative, fails to appear at any regularly scheduled conference or hearing in the matter of which I have been notified at the address above, the department may issue a notice of proposed default against me in this matter for failure to appear. I also verify that I have served a copy of this protest upon the applicant.

Signed this 29Th day of April, 1999.

Michael Ihler
PROTESTANT

PROTESTANT'S REPRESENTATIVE

MICROFILMED
JUL 26 2000

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INSTRUCTIONS

1. The matter being protested must be clearly identified. A typical matter is identified by the application number such as "Application for Permit No. _____ in the name of _____" or "Application for Transfer No. _____ in the name of _____."

2. Show the name of the protestant. Only one (1) protestant may be shown per protest form. If this protest form is signed by more than one person, the hearing officer will consider the first signer as the official protestant and the representative for service of documents.

3. If the protestant is represented by an attorney or other authorized representative, show the representative's name. The department then will serve documents on the representative and upon the protestant if specifically requested.

4. Show the address where the department is to serve the documents. This should be the address of the authorized representative unless the protestant does not designate a representative.

5. Show the telephone number of the authorized representative unless the protestant does not designate a service representative.

6. Specifically describe the nature of the protest.

7. Describe the relief being sought by the protestant.

FOR DEPARTMENT USE ONLY

Received by L. SKINNER Date 4/29/99 Time NOON

$25.00 fee Receipted by L. SKINNER # S022083 Date 4/29/99

MICROFILMED
JUL 26 2000

AFFIDAVIT of PUBLICATION

RECEIVED
APR 27 1999
Department of Water Resources
Southern Region

State of Idaho } ss.
County of Jerome }

Patty Nance, being first duly sworn, deposes and says that he/she is the printer (publisher) of the Jerome North Side News, a newspaper published every week in Jerome, County of Jerome, State of Idaho, that said newspaper has been continuously and uninterruptedly published for a period of seventy-eight consecutive weeks prior to the first publication of the annexed notice, and is a newspaper qualified to publish legal notices as provided by act of the 1919 session of the legislature of the State of Idaho, known as House Bill 145, that the annexed advertisement was published once each week for 2 consecutive issues in said newspaper proper and not in a supplement, that the date of the first publication of said advertisement was on the 15th day of April, 1999, and the date of the last publication was on the 22nd day of April, 1999

Patty Nance

On this 22nd day of April, in the year of 1999, before me, a Notary Public, personally appeared Patty Nance, known or identified to me to be the person whose name subscribed to the within instrument, and being by me first duly sworn, declared that the statements therein are true, and acknowledged to me that he/she executed the same.

Notary Public for Idaho
Residing at Jerome, Id
My commission expires: 3/6/01

#7964 / 25677
NORTH SIDE NEWS
Jerome, Idaho

OK MB 5/11/99

COST OF PUBLICATION

Number of Picas per Line _____
Number of Lines in Notice _____
Number of Insertions 2X

_____ Lines tabular at _____ 7¢/Pica
637.31 Lines straight at 38.24 6¢/Pica
637.31 Subsequent lines at 31.87 5¢/Pica
Affidavit Fee 2.25
TOTAL COST 72.36

MICROFILMED

COPY OF NOTICE

(Paste Here)

T#5436+5437 - Jerome Cheese
TITLE OF NOTICE

PLAINTIFF ATTORNEY

DEFENDANT

PLAINTIFF
IDWR
BILL TO

NOTICE OF PROPOSED CHANGES TO WATER RIGHTS

Notice is hereby given that applications have been filed with the Department of Water Resources to make changes to Right No. 35-08606. PRESENTLY, Water Right No. 35-08606 (6.07 cfs) with a priority date of 07/01/1985 is diverted from groundwater within NE1/4NW1/4, S16, T04S, R31E; Bingham County for irrigation of 303.5 acres within N1/2, S16, T04S, R31E; Bingham County. Transfer No. 5436 filed by JEROME CHEESE CO., ATTN REX MINCHEY, PO BOX 485; JEROME ID 83338 proposes to dry up 160 acres in Bingham County, divert and use 3.20 cfs from Designated Water Right No. 35-08606D by drilling two new wells within NW1/4NE1/4, S25, T08S, R16E for commercial cheese factory use in Jerome County. Transfer No. 5437 filed by JOE AGUEDA, 326 E 400 N; JEROME ID 83338 proposes to dry up 15 acres in Bingham County. The applicant wishes to divert and use a combined 0.30 cfs from one (1) existing well and one (1) new well within SE1/4SW1/4, S27, T07S, R17E; Jerome County for the following dairy uses:

Right No.*Priority*Amt (cfs)*Use
36-08606F*07/01/1985*0.30*
Stockwater & Commercial

Any protest against the proposed changes must be filed with the Department of Water Resources, Southern Region, 1341 Fillmore St., Suite 200; Twin Falls, ID 83301 together with a protest fee of $25.00 on or before May 3, 1999 to be considered by the Department in its decision to grant or deny any part of the proposed change. (Each transfer requires a separate protest). The protestant must also send a copy of the protest to the applicant.

Karl J. Dreher, Director

PUB. 4/15 - 4/22 N25677

AFFIDAVIT of PUBLICATION

RECEIVED
APR 27 1999
Department of Water Resources
Southern Region

State of Idaho
County of Jerome } ss.

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Notary Public for Idaho
Residing at Jerome, Id
My commission expires: 3/6/01

#7964 / 25677

NORTH SIDE NEWS
Jerome, Idaho

OK mb 5/11/99

COST OF PUBLICATION

Number of Picas per Line _____

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Affidavit Fee 2.25
TOTAL COST 72.36

MICROFILMED

PUBLICATION RATES
(Idaho Code, Rev Statutes 1996)

7-8 pt per line tabular ... 7¢/Pica
7-8 pt per line straight .....6¢/Pica
7-8 pt. per line successive insertions ..... 5¢/Pica

Nº 7964

25677

May 24, at 3 p.m
Elisha M. Gragorio, 19, Jerome disturbing the peace. Pled no guilty, pre-trial set for May 24, a 3 p.m.
Donald Ray Hatch, Jr, 20 Jerome, order to show cause.
William E. Hicks, 43, Eden order to show cause.
Tommy Joe Joaquine Houston 20, Jerome, possession of controlled substance. Dismisse by prosecutor.
James Keipper, 21, Jerome unlawful entry. Pled not guilty pre-trial set for May 24, at 3 p.m.
Douglas Lynn Kerley, 35 Jerome, DUI. Pled not guilty pre-trial set for May 17, at 1:45 p.m.
Timothy J. Koch, 37 Kennewick, Wash., DWOP. Plea not guilty, pre-trial set for May 24, at 3 p.m.
Evelyn Mary Osborne, 30 Jerome, DWOP. Pled - ty

NOTICE OF PROPOSED CHANGES TO WATER RIGHTS

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Right No.*Priority*Amt (cfs)*Use
36-08606F*07/01/1985*0.30*
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Karl J. Dreher, Director

Published in the North Side News on 04/15 & 04/22/99.

MICROFILMED

JUL 2 6 2000

NOTICE OF PROPOSED CHANGES TO WATER RIGHTS

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Right No.	Priority	Amt (cfs)	Use
36-08606F	07/01/1985	0.30	Stockwater & Commercial

Any protest against the proposed changes must be filed with the Department of Water Resources, Southern Region, 1341 Fillmore St., Suite 200; Twin Falls, ID 83301 together with a protest fee of $25.00 on or before May 3, 1999 to be considered by the Department in its decision to grant or deny any part of the proposed change. **(Each transfer requires a separate protest).** The protestant must also send a copy of the protest to the applicant.

Karl J. Dreher, Director

Published in the North Side News on 04/15 & 04/22/99.

MICROFILMED

JUL 2 6 2000

State of Idaho
DEPARTMENT OF WATER RESOURCES
1341 Fillmore Street, Suite 200, Twin Falls, ID 83301-3380
Phone: (208) 736-3033 FAX: (208) 736-3037

SOUTHERN REGION

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

LEGALS DEPT
MAGIC VALLEY PUBLISHING CO
ATTN North Side News
PO BOX 468
JEROME ID 83338

Gentlemen:

Enclosed you will find a legal notice which we wish to have published in your newspaper. We have inserted the required publication dates.

We have attempted to submit this legal as camera ready. Please call me at your earliest convenience and prior to your staff re-typing the legal if it does not meet your specifications so I can possibly make adjustments.

If you cannot publish the notice on the proposed dates, please contact us immediately.

In order to receive payment, an affidavit of publication must be submitted to the Department along with the publication bill.

Very truly yours,

Mary Baldwin
Administrative Assistant

Enclosure

MICROFILMED

JUL 2 6 2000

State of Idaho
DEPARTMENT OF WATER RESOURCES
1341 Fillmore Street, Suite 200, Twin Falls, ID 83301-3380
Phone: (208) 736-3033 FAX: (208) 736-3037

SOUTHERN REGION

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

April 2, 1999

ATTN LEGALS
THE MORNING NEWS
PO BOX 70
BLACKFOOT ID 83221

Gentlemen:

Enclosed you will find a legal notice which we wish to have published once a week for two consecutive weekly issues of your newspaper.

We have inserted the required publication dates. If you cannot publish the notice on the proposed dates, please contact us immediately.

In order to receive payment, an affidavit of publication must be submitted to the Department along with the publication bill.

Sincerely,

Mary A. Baldwin
Administrative Assistant

MB

Enclosure

MICROFILMED
JUL 26 2000

NOTICE OF PROPOSED CHANGES TO WATER RIGHTS

Notice is hereby given that applications have been filed with the Department of Water Resources for changes to a right.

PRESENTLY, Water Right No. 35-08606 (6.07 cfs) with a priority date of 07/01/1985 is diverted from groundwater within NE1/4NW1/4, S16, T04S, R31E; Bingham County for irrigation of 303.5 acres within N1/2, S16, T04S, R31E; Bingham County.

Transfer No. 5435 filed by **STEVE &/OR DARLA WYBENGA,** 662 SPRING COVE RD; BLISS ID 83314 proposes to dry up 15 acres in Bingham County. The applicant wishes to use a combined 0.36 cfs for stockwater/commercial uses in an existing dairy in Gooding County.

Transfer No. 5436 filed by **JEROME CHEESE CO.,** ATTN REX MINCHEY, PO BOX 485; JEROME ID 83338 proposes to dry up 160 acres in Bingham County. The applicant wishes to use 3.20 cfs in a commercial cheese factory in Jerome County.

Transfer No. 5437 filed by **JOE AGUEDA,** 326 E 400 N; JEROME ID 83338 proposes to dry up 15 acres in Bingham County. The applicant wishes to use a combined 0.30 cfs for stockwater/commercial uses in an existing dairy in Jerome County.

Any protest against the proposed changes must be filed with the Department of Water Resources, Southern Region, 1341 Fillmore St., Suite 200; Twin Falls, ID 83301 together with a protest fee of $25.00 on or before May 3, 1999 to be considered by the Department in its decision to grant or deny any part of the proposed change. **(Each transfer requires a separate protest).** The protestant must also send a copy of the protest to the applicant.

Karl J. Dreher, Director

Published in The Morning News on 04/15 & 04/22/99.

MICROFILMED

JUL 2 6 2000

State of Idaho
DEPARTMENT OF WATER RESOURCES
1341 Fillmore Street, Suite 200, Twin Falls, ID 83301-3380
Phone: (208) 736-3033 FAX: (208) 736-3037

SOUTHERN REGION

April 1, 1999

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

ATTN REX MINCHEY
JEROME CHEESE CO
PO BOX 485
JEROME ID 83338

Re: Application for Transfer No. 5436 (35-08606 Pt)

Dear Applicant(s):

The Department of Water Resources acknowledges receipt of your Application for Transfer.

Since the applications proposes a change in County for the point of diversion, this office has scheduled advertising the applications in both The Morning News & North Side News for 04/15 and 04/22/99. A period of ten days following the second publication will be allowed for the submittal of protests with the final protest date on May 3, 1999.

If an application is protested, you will be sent a copy of the protest. The protest must be resolved before the application is approved or denied. If the protest is not resolved voluntarily, this Department will conduct a conference and/or hearing on the matter.

State Office personnel will conduct a complete review prior to final processing of the application and will notify you of the outcome of this review.

Please feel free to contact this office if you have any questions regarding this procedure.

Sincerely yours,

Corey Skinner, E.I.T.
Safety of Dams Engineer

cs:mb

MICROFILMED

JUL 26 2000

State of Idaho
DEPARTMENT OF WATER RESOURCES
1341 Fillmore Street, Suite 200, Twin Falls, ID 83301-3380
Phone: (208) 736-3033 FAX: (208) 736-3037

SOUTHERN REGION

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

March 31, 1999

ATTN JOHN CECIL
CITY OF JEROME
152 E AVE A
JEROME ID 83338

RE: Jerome Cheese Co. Applications

Dear Mr. Cecil:

Per your request on this date, please find the following listed items enclosed:

1) Copy of Protested Application for Transfer No. 5401.

2) List of parties associated with Transfer No. 5401.

3) Copy of Application for Transfer No. 5436.

4) Department of Water Resources Administrative Rules of Procedure.

If you have any questions or if this office can be of further assistance, please feel free to contact us.

Sincerely,

Mary A. Baldwin
Administrative Assistant

MB

MICROFILMED

JUL 2 6 2000

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000
Phone: (208) 327-7900 FAX: (208) 327-7866

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

May 10, 1995

ROY E HINCKS
2851 W 900 S
STERLING ID 83279

RE: WATER RIGHT NO. 35-08606

Dear Water Right Holder(s):

Enclosed is a copy of the Water Right License issued on the above referenced permit along with a copy of your approved Application for Amendment.

Should you have any questions regarding these documents, please contact me.

Sincerely,

Shelley Watte Keen

Shelley W. Keen
Water Rights Supervisor

SK:rl

Enclosure

MICROFILMED
MAY 17 1995

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098
Phone: (208) 327-7900 FAX: (208) 327-7866

PHILIP E. BATT
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

April 18, 1995

ROY E HINCKS
2851 W 900 S
STERLING ID 83279

RE: WATER RIGHT NO. 35-08606

Dear Mr. Hincks:

I received the signed licensing amendment for the above referenced permit. However, the $50.00 filing fee for the amendment was not enclosed. For your reference I have enclosed a copy of the original amendment letter.

Please send the $50.00 filing fee within 14 days to prevent any further delay in licensing this permit. Please write your water right number on the check to help expedite the process.

If you have any questions, please contact me at (208) 327-7946.

Sincerely,

Shelley Walter Keen

Shelley Walter Keen
Water Rights Supervisor

SWK:rl

Enclosure

MICROFILMED

MAY 17 1995

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098
Phone: (208) 327-7900 FAX: (208) 327-7866

PHILIP E. BATT
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

March 28, 1995

ROY E HINCKS
2851 W 900 S
STERLING ID 83279

RE: WATER RIGHT NO. 35-08606

Dear Water Right Holder(s):

I previously forwarded to you an Application for Amendment so that you could amend your permit to correspond with the findings of the Department's field examiner.

As of this date, I have not received the amendment. If I do not receive it within fourteen (14) days, I will assume you no longer have any interest in the permit and cancellation proceedings will begin. Enclosed for your convenience is another amendment form in the event the first one was misplaced.

If you have any questions, please contact me. My telephone number is (208) 327-7946.

Sincerely,

Shelley W. Keen
Water Rights Supervisor

SK:rl

Enclosure

MICROFILMED

MAY 17 1995

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000
Phone: (208) 327-7900 FAX: (208) 327-7866

PHILIP E. BATT
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

March 3, 1995

ROY E HINCKS
2851 W 900 S
STERLING ID 83279

RE: WATER RIGHT NO. 35-08606

Dear Water Right Holder(s):

The above referenced water right is in the process of being licensed. However, before a license can be issued, your permit must be amended to correspond with the findings of the Department's field examiner.

The enclosed Application for Amendment contains information that will be included on the license when it is issued. The amendment reflects a change in the location of the point(s) of diversion. Please review carefully and if you concur, sign the amendment and return with the $50.00 filing fee within 14 days.

The last page of the Application for Amendment form contains a list of CONDITIONS/REMARKS proposed for the license when it is issued. These conditions/remarks may be modified upon further administrative review.

If you do not concur, or if you have any questions about this information, please contact me as soon as possible. My telephone number is (208) 327-7946.

Sincerely,

Shelley W. Keen
Water Rights Supervisor

SK:rl

Enclosure

MICROFILMED
MAY 17 1995

LICENSE REVIEW CHECKLIST

BRENDA

PERMIT NO. 35-086016 DATE 2/22/95

	Yes	No	
NAME	___	✓	Or Address Change?
PRIORITY DATE	___	✓	Advance? ___ Advanced to: _____ Order to reinstate needed? _____ Incorrect fee for rate recommended? NO
SOURCE	___	✓	Changes or just clarification of originally intended source? _____ Notice of Intent to Void necessary? _____
POINT OF DIV	✓	___	Amendment needed? Change to NENW of Sec 16
	___	✓	Overlaps? _____
PLACE OF USE	___	✓	Amendment needed? _____
	___	✓	Overlaps? _____
DIV RATE	___	✓	Permit/fee limits: 6.4 CFS Meas Q = _____ Theo Q = 6.28 Recommend: 6.07 303.5 x .02 = 6.07 Combined rates exceed capacity ____
ANNUAL VOLUME	___	✓	Volume Limit: _____ Season: 6/4.0 (4-1 to 10-31) Calculations: 303.5 x 4 = 1214 Flow limit: ____ cfs x ____ x 1.9835 = _____ Combined volumes exceed capacity/allowable _____
USES	___	✓	Change in Nature of Use or additional uses? _____ Amendment necessary? _____
REMARKS	___	✓	Multiple p/d(s) in ¼ ¼? _____
	___	✓	Other _____
CONDITIONS	___	✓	Measuring/Locking Devices
	___	✓	Watermaster control - District _____
	R31	___	Irrigation Overlap
	___	✓	Water Quality
	✓	___	Other R55 R56 R57 Heat/Cool/ Fish verified ____ (TRUST CONDITIONS)

COMMENTS: Reduce Acres & rate

Amend P/D

RECOMMENDED	CFS	VOL
Irrigation	6.07	1214

SRBA Claim Filed NO
Adjustment Memo Needed NO

LICENSE ____
1ST AMENDMENT LETTER P39 + P38 + S05
FINAL AMENDMENT LETTER P47 + S05

Form 219
6/92

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

BENEFICIAL USE FIELD REPORT

RECEIVED
JAN 1 2 1995
Department of Water Resources

A. GENERAL INFORMATION

Permit No. 35 - 8606

1. Owner: Roy E Hicks Phone No. 328-2402

Current Address: 2851 W. 900 S. Sterling, Id.

2. Accompanied by: Roy Hicks EXAM DATE: 7-21-92

Address: Same Phone No. Same

Relationship to Permit Holder:

3. Source: ground water tributary to

B. OVERLAP REVIEW

1. Other water rights with the same place of use: NA.

2. Other water rights with the same point of diversion: N.A

C. DIVERSION AND DELIVERY SYSTEM

1. **Point(s) of Diversion:**

Ident No.	Gov't Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Method of Determination/Remarks
			NE	NW	16	4S	31E	Bingham	Aerial Photo/Onsite Inspection

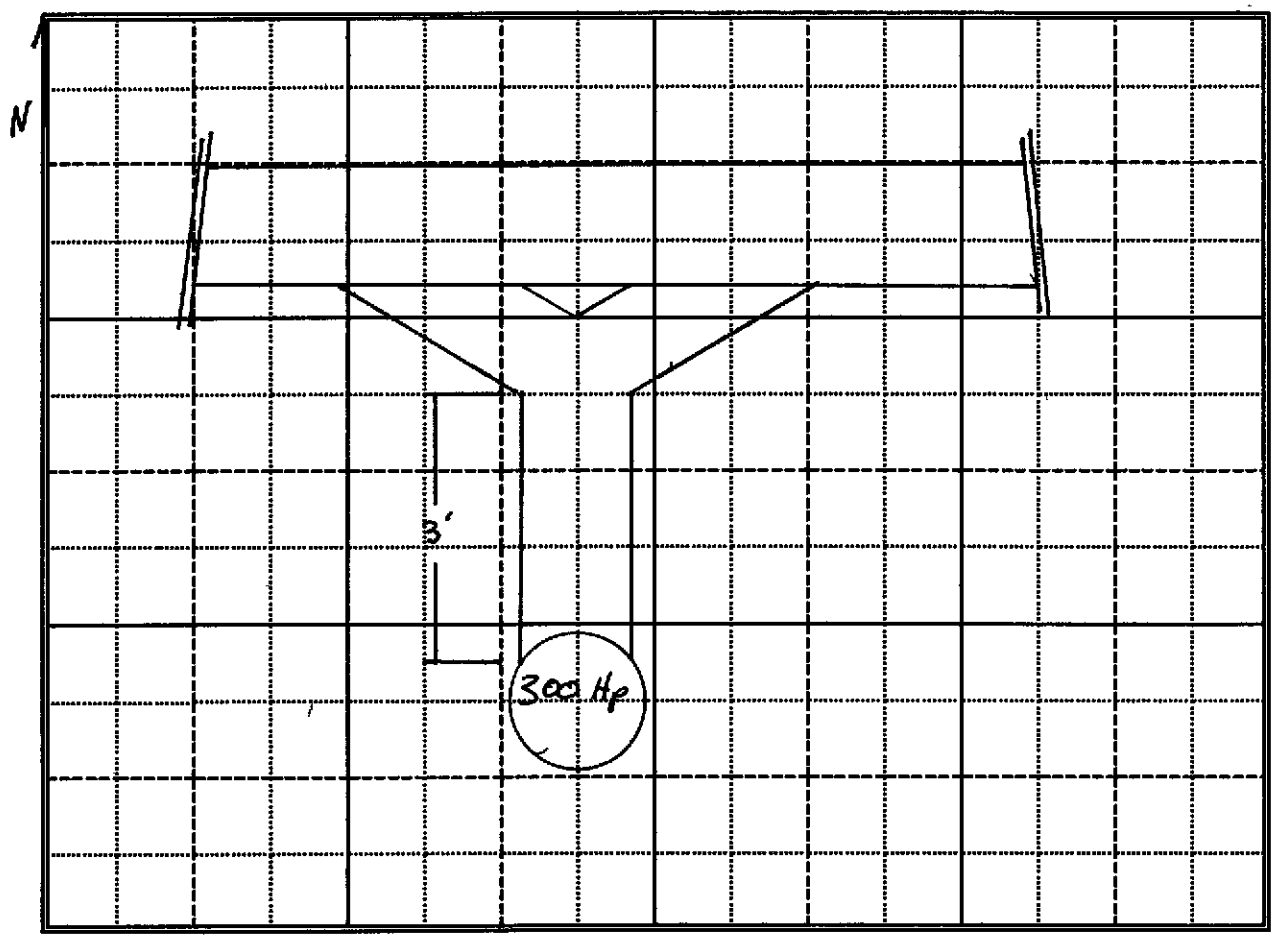
2. **Place(s) of Use:** Indicate Method of Determination

TWP	RGE	SEC	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
4S	31E	16	37	40	40	36	40	34.25	36.25	40									303.5

MICROFILMED

MAY 17 1995

3. **Delivery System Diagram:** Indicate all major components and distances between components. Indicate weir size/ditch size/pipe i.d. as applicable.



Scale: 1" = _____.

____ Copy of USGS Quadrange Attached Showing location(s) of point(s) of diversion and place(s) of use (required).

X Aerial Photo Attached (required for irrigation of 10+ acres)

____ Photo of Diversion and System Attached

4.

Well or Diversion Identification No.*	Motor Make	Hp	Motor Serial No.	Pump Make	Pump Serial No. or Discharge Size
	GE	300	unknown	Johnston	10" discharge

Code to correspond with No. on map and aerial photo

D. FLOW MEASUREMENTS

1.

Measurement Equipment	Type	Make	Model No.	Serial No.	Size	Calib. Date
well Probe	Single Wire	dympic	500	—	500'	

2. **Measurements:** Static water depth 110'
Operating pressure 80 psi

RECEIVED
MAY 17 1995

E. NARRATIVE/REMARKS/COMMENTS

300 Hp pump to 10" underground mainline supplying water to 10-tower center pivot sprinklers. The corners are Irrigated with portable main line and Large moveable end guns.

Have conditions of permit approval been met? X yes ___ no

RECEIVED

MAY 17 1995

F. FLOW CALCULATIONS ____ Additional Computation Sheets Attached

Measured Method:

Theory $\frac{300\ Hp(8.814)(70\%)}{110' + 80psi(2.308)} = 6.28cfs\ (2819gpm.)$ Capacity

303.5 acres x 0.02 = 6.07cfs for licensing

G. VOLUME CALCULATIONS

1. Volume Calculations for Irrigation:

$V_{I.R.}$ = (Acres Irrigated) x (Irrigation Requirement) = (303.5)(4) = 1214

$V_{D.R.}$ = [Diversion Rate (cfs)] x (Days in Irrigation Season) x 1.9835 = (6.07)(214)(1.9835) = 2576.5

V = Smaller of $V_{I.R.}$ and $V_{D.R.}$ = 1214 afa

2. Volume Calculations for Other Uses:

H. RECOMMENDATIONS

1. Recommended Amounts

Beneficial Use	Period of Use From	Period of Use To	Rate of Diversion Q (cfs)	Annual Volume V (afa)
Irrigation	4/1	10/31	6.07	1214
		Totals:	6.07	1214

2. Recommended Amendments

✓ Change P.D. as reflected above ___ Add P.D. as reflected above ___ None

___ Change P.U. as reflected above ___ Add P.U. as reflected above ___ Other

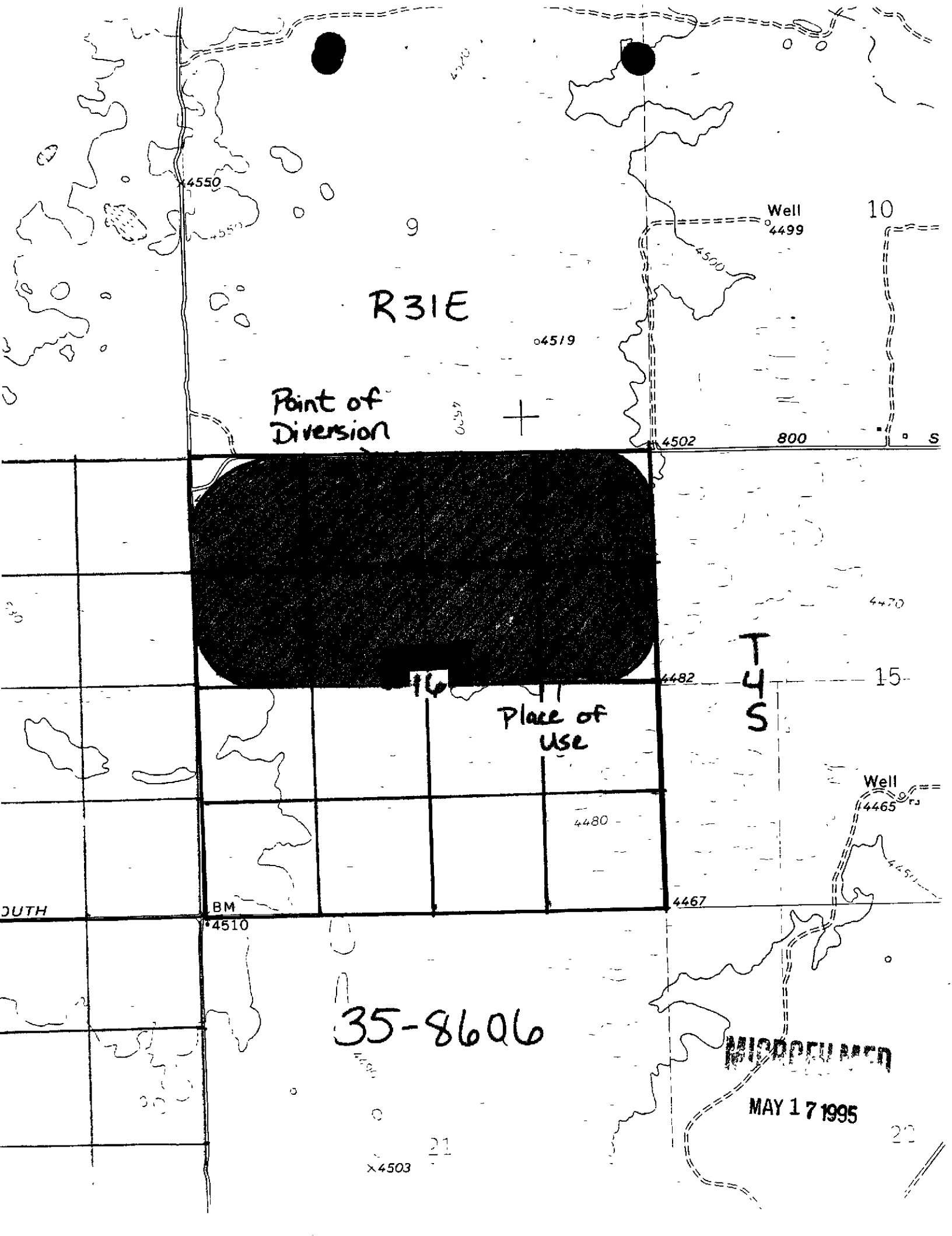
I. AUTHENTICATION

Field Examiner's Name Gary Buss Date 7-21-92

Reviewer J.C. Jones Date 1-6-95 SEAL

MICROFILMED

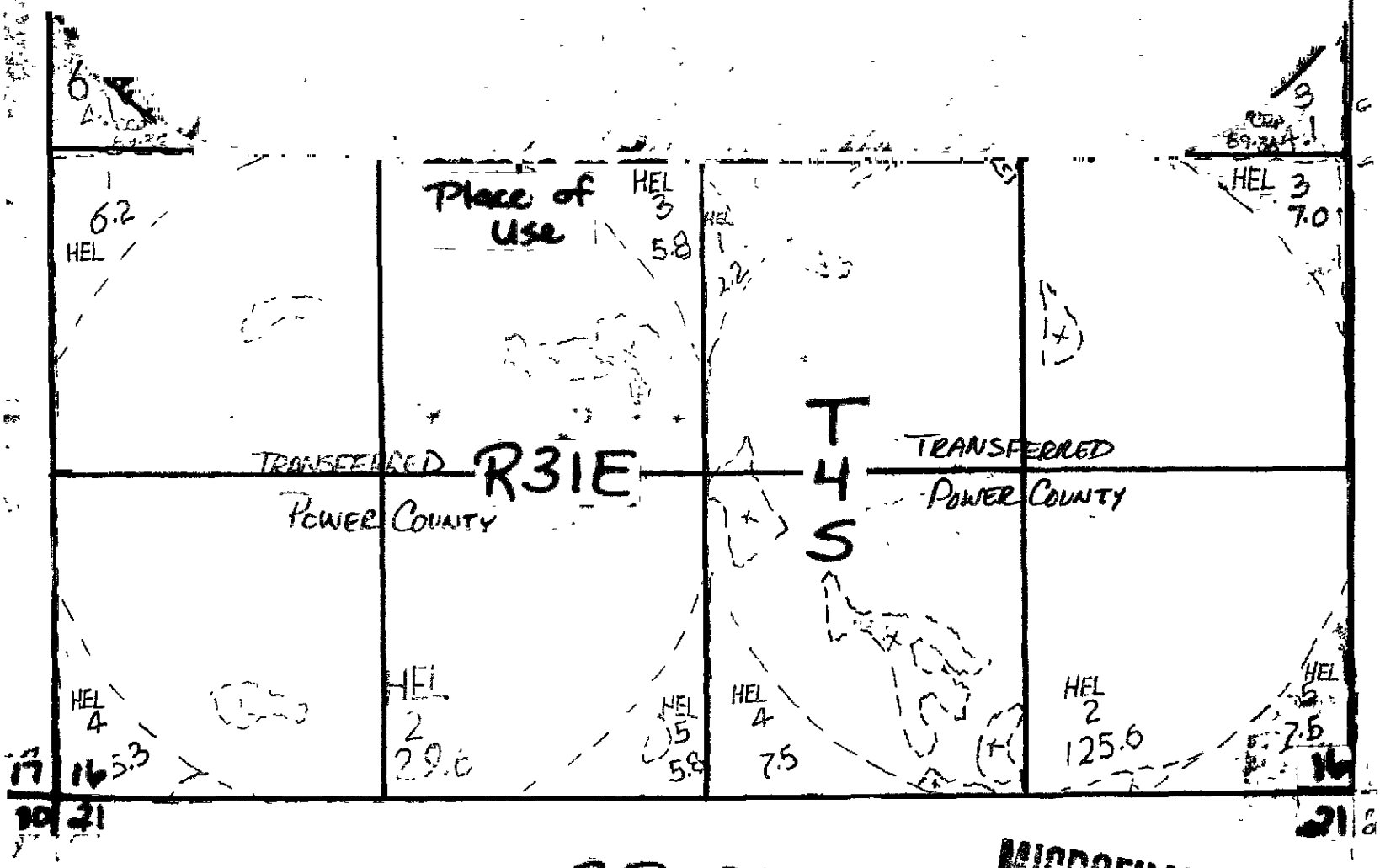
MAY 17 1995


R31E
T4S
Point of Diversion
Place of Use
Well
4499
Well
4465
4550
4519
4502
800
4482
4480
4470
4467
BM
4510
4503
9
10
15
16
21
22
35-8606
MAY 17 1995

R 31

Springfield Rd.

Point of Diversion



35-8606

MICROFILMED
MAY 17 1995

January 31, 1992

ROY E. HINCKS
2851 W. 900 S.
STERLING ID 83279

PROOF ACKNOWLEDGMENT LETTER

RE: PERMIT NO. 35-08606

Dear Permit Holder:

The department acknowledges receipt of the proof of beneficial use form submitted for the above referenced permit. The next step in the process of developing a water right is for the department to conduct a field examination to determine and confirm the use being made of the water.

I note that the permit issued to you by the department requires the installation of a flow measurement port to allow the department to determine the rate of diversion. The proof which you submitted does not show that you have installed this equipment.

The installation of the flow measurement port must be complete by the time the department representative conducts the examination of your system unless the department has rescinded the requirement prior to the field examination. In some cases, the equipment requirement can be rescinded because the equipment cannot be physically installed, is not appropriate or can be accommodated with other measuring methods.

If you have questions concerning this matter, please feel free to contact the EASTERN Regional Office in Idaho Falls at (208)525-7161.

Sincerely,

Karen L. Gustafson
Secretary/Records Manager

c: IDWR - Region

RECEIVED
FEB 07 1992

138262

November 30, 1991

ROY E. HINCKS
2851 W. 900 S.
STERLING ID 83279

PROOF DUE NOTICE

RE: PERMIT NO. 35-08606

Dear Permit Holder:

One of the conditions of approval of the above referenced water permit was that proof of the extent of your beneficial use must be submitted to this office on or before February 1, 1992. (See last page of your approved permit or your last approved extension request.) Enclosed is a form which when accompanied by the license examination fee or a complete field examination report prepared by a certified water right examiner may be used to submit the required proof.

If you have not fully completed your project, and you or a previous owner of this permit have not received a prior extension of time, you may request an extension of time if the delay is for reasonable cause as provided in Section 42-204, Idaho Code. If you have been prevented from proceeding by a governmental agency or by litigation which might bring title to the water in question, more than one extension of time can be granted. An extension of time request form is enclosed for your convenience.

Either an acceptable proof of beneficial use submittal or an acceptable request for an extension of time must be received by this department on or before the above described proof due date. If neither is received, the department will send you a lapse notice. Within sixty (60) days of the mailing of the lapse notice, the permit will no longer be of any force nor effect.

SINCERELY,

Karen L. Gustafson
Secretary/Records Manager

Enclosures

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FEB 07 1992

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720 -(208) 327-7900

CECIL D. ANDRUS
GOVERNOR
R. KEITH HIGGINSON
DIRECTOR

March 4, 1991

ROY E. HINCKS
2851 W. 900 S.
STERLING, ID 83279

PERMIT APPROVAL NOTICE

RE: PERMIT NO. 35-08606

Dear Permit Holder:

Enclosed is a copy of your approved application for permit. We direct your attention to the conditions of approval on the final page.

Enclosed is a form entitled "Instructions for Proof of Beneficial Use". Please read the instructions carefully since you must take further action to develop this permit. Also enclosed is a form entitled "Proof of Beneficial Use". If your project is already completed you should complete and submit this form immediately.

Be sure to note the special condition requiring you to install a measuring device. Enclosed, for your reference, is a list of of measuring device options.

Section 42-235, Idaho Code, requires that a "drilling permit" must be obtained from the department for all wells constructed after July 1, 1987. A drilling permit is a separate permit that must be issued in addition to your permit to appropriate water. Commencement of well construction or diversion of water under your permit to appropriate water is prohibited unless a drilling permit is obtained.

This permit authorizes the appropriation of trust water. Trust water is defined as that portion of a particular hydropower water right which exceeds certain minimum stream flows established by state action, and is held in trust by the State of

MICROFILMED
MAR 18 1991

Idaho for the use and benefit of the people within the state. Conditions pertaining to a term review, annual use fee and jurisdiction of the permit are trust water conditions.

Sincerely,

JIM JOHNSON
Water Rights Supervisor

JJ:blm

Enclosures

MICROFILMED
MAR 1 8 1991

MEMORANDUM

TO: FILE

FROM: TIM LUKE

RE: APP. NO. 35-8606/Trust Water Processing & Rule 4,5. Info

DATE: 12-28-90

This application is a trust water filing which has come up for sequential processing under the appropriate rules and statutes. The applicant returned a trust water questionnaire claiming development prior to 1984.

A place of use overlap report in the file shws that most of the land under the application was classified as irrigated by the department for the 1986 irrigation season. My review of a 1983 infrared photo on file at the department confirms irrigation of all of the land under the application (N1/2 section 16). The photo clearly showed two center pivot systems and evidence that most of the corner acreage was also irrigated. I would allow all 320 acres under the application to be considered non-trust acreage due to development prior to 10/1/1984.

Since the development represented by this application has been in place since at least 1983, potential impacts raised in review of information required under Water Appropriation Rule 4,5. have already been addressed. I therefore recommend waiving the information required by Water Appropriation Rule 4,5.

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MAR 18 1991

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DEC 2 8 1990

DEPT OF WATER RESOURCES
1301 North Orchard St.
Statehouse Mail
Boise, Idaho 83720
(208) 327-7900

NOTICE OF APPLICATION FOR TRUST WATER RIGHT

35-08606

HINCKS, Roy E
2851 W 900 S
Sterling, Idaho 83279
Source GROUNDWATER
Diversion Pt SENW, SEC 16, T 04S, R 31E
Use IRRIGATION (6 400 CFS)
Total Diversion (6 400 CFS)
Date Filed 7/1/1985
In T04S, R31E, S16, NENE, NWNE, SWNE, SENE, NENW, NWNW, SWNW, SENW
320 0 ACRES TOTAL

35-08626

STEWART, Reid G
3100 West 1000 South
Aberdeen, Idaho 83210
Source GROUNDWATER
Diversion Pt NWSW, Sec 30, T 04S, R 31E
SENE, Sec. 31, T 04S, R 31E.
Use IRRIGATION (3 000 CFS)
Total Diversion (3 000 CFS)
Date Filed 2/13/1986
In T04S, R31E, S31, NWNE, SWNE, NENW, SENW
160 0 ACRES TOTAL

The permit(s) will be subject to all prior water rights Protests may be submitted based on the criteria of Sec 42-203A, Idaho Code, and/or the new public interest criteria of Sec 42-203C, Idaho Code Protests must be filed with the Director, Dept of Water Resources, Statehouse Mail, Boise, Idaho, 83720, on or before DECEMBER 24, 1990

R KEITH HIGGINSON
Director

(1001)
Pub 12/6, 13

OK TJ 12-28-90

AFFIDAVIT of PUBLICATION

County of Bingham)
)ss
State of Idaho)

I, Jacqueline Graham do solemnly

swear that I am the Legal Coordinator of The Morning News which is a daily newspaper of general circulaton published each day except Sunday at Blackfoot, Bingham County, Idaho, said newspaper having been so published at Blackfoot, aforesaid for more than one year past; that said newspaper heretofore complied with all the provisions of Chapter 154 of the Sessions Laws of Idaho of 1931, approved March 11, 1933, and duly designated, pursuant to law, a particular day of the week as the day on which legal notices required by law or by the order of any Court of competent jurisdiction within the State of Idaho shall be published to-wit: of each week; that the notice attached hereto and which is a part of this affidavit and part of the proof of publication was published in said issue or said

newspaper two consecutive weeks,

the first publication having been made on the

6th day of December, 19 90;

and the last publication having been made on the 13th day of December, 19 90; that said notice was published in the regular and entire issue of every number of the paper as aforesaid during the period and time of publication, and that notice was published in the newspaper and not in a supplement.

On this 18th day of December, in the year 19 90 before me a Notary Public of said State, personally appeared Jacqueline Graham known or identified to me to be the person whose name is subscribed to the within instrument, and being by me first duly sworn, declared that the statements therein are true, and acknowledged to me that he executed the same.

DEC 28 1990

Kaye M. Taylor
Notary Public for the State of Idaho,
Residing at Blackfoot, Idaho
My commission expires
November 10, 1994

Affidavit Processing fee $5 00

S T A T E O F I D A H O
DEPARTMENT OF WATER RESOURCES
State Office
1301 North Orchard St.

Statehouse Mail
Boise, Idaho 83720
(208) 327-7900

NOVEMBER 28, 1990

The Morning News
Box 70
Blackfoot, ID 83221

Dear Legal Dept.:

Enclosed you will find legal notices which we wish to have published on the dates indicated (once a week for two consecutive weekly issues) in your newspaper. If you cannot publish the notice on the proposed dates, please contact us immediately.

An affidavit of publication must be submitted to the Department along with the publication bill. Your cooperation is appreciated.

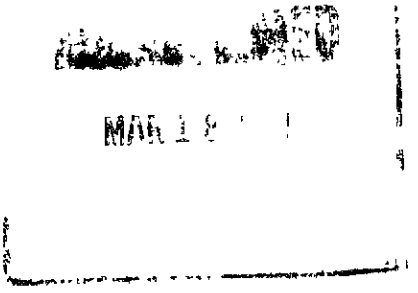
Please send the affidavit of publication and publication billing to this office before DECEMBER 24, 1990.

Yours truly,

Kevin Lucke for

BRENDA L. MILLER
Clerical Specialist

Encl.



35-08606

HINCKS, ROY E.
2851 W. 900 S.
STERLING, ID 83279

Source: GROUNDWATER

Diversion Pt: SENW Sec 16 T 04S R 31E

Use: IRRIGATION (6.400 CFS)
Total Diversion: (6.400 CFS)

Date Filed: 7/ 1/ 1985

In: T04S R31E S16	NENE	NWNE	SWNE	SENE
	NENW	NWNW	SWNW	SENW

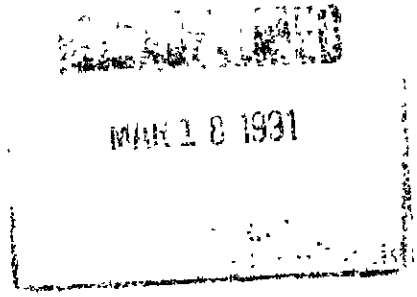
320.0 ACRES TOTAL

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MAR 1 8 1991

The permit(s) will be subject to all prior water rights. Protests may be submitted based on the criteria of Sec. 42-203A, Idaho Code and/or the new public interest criteria of Sec. 42-203C, Idaho Code. Protests must be filed with the Director, Dept. of Water Resources, Statehouse Mail, Boise, Idaho 83720 on or before DECEMBER 24, 1990.

R. Keith Higginson, Director

Published 12/ 6/1990 & 12/13/1990



RECEIVED
NOV 21 1990
Department of Water Resources

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
TRUST WATER INFORMATION QUESTIONNAIRE

Application No. 35-8606

INSTRUCTIONS: IF YOU ARE NOT INTERESTED IN HAVING THE APPLICATION PROCESSED, PLEASE COMPLETE AND RETURN THE ENCLOSED WITHDRAWAL FORM.

IF YOU WISH TO HAVE THE APPLICATION PROCESSED, PLEASE ANSWER THE FOLLOWING QUESTIONS AS THOROUGHLY AS POSSIBLE. FAILURE TO RETURN EITHER THE WITHDRAWAL FORM OR QUESTIONNAIRE IS CAUSE FOR THE DEPARTMENT TO VOID THE APPLICATION.

1a. Are you the current owner of the land or place of use described under this application? Yes X No_____
b. If you are not the propoerty owner, please descibe the arrangement enabling you to develop the proposed project.

2a. Has the source of water listed on this application been used to irrigate any of the land described under this same application prior to October 1, 1984? Yes X No_____
b. If yes, please describe the extent of development and number of acres irrigated.(Note: Uses developed after October, 1984 are considered trust water diversions and may be subject to certain conditions. You may be asked to verify uses established prior to October, 1984.)
This well was drilled back in 1961 under permit no. 27685 Charles Collins and was fully developed in 1981 and has irrigated 218 acres since that time.

3. If you answered NO to ques #2a, please state the number of acres you have irrigated with this source after October 1, 1984. _____

4. If you have not irrigated lands under this application, please state the number of acres you plan to complete. _____

5. If the permit is a supplemental filing please identify other water rights which are used on the same land.

Use the reverse side of this form if you wish to add any comments. You may mark changes on the enclosed application to designate any proposed amendments. (Note: Proposed changes which result in an expansion of use will not be considered by the department.)

I hereby assert that the responses provided above are true to the best of my knowledge. I understand that any willful misrepresentations may result in voiding of the application.

Applicant Roy E Hinchs Date 11-15-90

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MAR 18 1991

State of [redacted]ho [redacted]
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720 -(208) 327-7900

CECIL D. ANDRUS
GOVERNOR
R. KEITH HIGGINSON
DIRECTOR

October 22, 1990

RE: APPLICATION FOR PERMIT NO. 35-81006

Dear APPLICANT:

Due to the Swan Falls litigation, Department approval of the enclosed application may have been delayed. The Department is presently reviewing your application and may authorize the proposed development.

The purpose of this letter is to determine: (1) if you are still interested in developing the project, and (2) the extent of development, if any, that has already occurred under the application. Enclosed are two forms requesting information which will help the Department expedite the processing of the application.

1. If you have abandoned or have no interest in continuing with your plans for development of the project, please complete the enclosed withdrawal form and return it to the Department. If you request a withdrawal of the application and the application was not previously advertised, the department will refund your original filing fee.

2. If you wish to continue with your proposed development plans, or have completed all or a portion of the proposed development before October 1, 1984, then you must complete and return the enclosed questionnaire. You may use the questionnaire and enclosed application to make any comments &/or amendments concerning the application. Your completion of the questionnaire will expedite processing and help the department determine if the water diverted under the application is public water or trust water. Approved trust water applications may be subject to additional conditions.

Failure to return either of the above forms within thirty (30) days of the date of this letter is cause for the Department to void the application.

Please be further advised that if any undeveloped portion of your proposed project is greater than 200 acres, the department will issue a notice requesting additional information as required by Water Appropriation Rule 4,5. (copy enclosed). In particular, rules 4,5,3. through 4,5,3,5. apply to your project if it is more than 200 acres. If necessary, the rule 4,5. information notice will be sent to you after you return the questionnaire.

If you have questions concerning the content of this letter or about completing the forms, please contact Tim Luke at the address below or by calling directly at 327-7864. The enclosed forms and all other relative information must be returned within thirty (30) days to:

Idaho Department of Water Resources
Statehouse Mail
Boise, Idaho 83720-9000
Attn: Tim Luke

Please note that a copy of your application is enclosed. The application number is also shown on the enclosed questionnaire.

Sincerely,

TIM LUKE
Sr. Water Resource Agent

Enclosures

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MAR 1 8 [illegible]

PLACE OF USE 1/4 1/4 OVERLAP REPORT

06/07/90

WR-NUMBER	NAME	SIG	SOURCE	T	R	S	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	SUM
											NE				NW				SW				SE	
3508606																							
3507632	CASPERSON	L	GROUNDWATER	04S	31E	16													33	33	33	33	264
3508606	HINCKS	A	GROUNDWATER	04S	31E	16	40	40	40	40	40	40	40	40									320
	1986 MAPPING DATA ——	-	COUNTY 11 QUAD Z 86	04S	31E	16	38	43	37	42	38	29	32	40	31	24	15	30	40	29	26	34	528

Reviewed 1983 infrared aerial DWR
- photo shows N ½ of sec 16 as irrig (center pivots visible).
Some fallow acres on corners may not be irrigated in this photo.
Recommend counting NO ~~WEST~~ acres.

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MAR 1 8 1991

COPY

June 23, 1989

Roy E. Hincks
2851 W. 900 S.
Sterling, ID 83210

Dear Mr. Hincks:

The Department is reviewing your application No. 35-8606 for the irrigation of 320 acres in Sec. 16, T. 4S, R. 31E. In order to advertize this application, you will need to provide information required under rules 4,5,3. and 4,5,3,6. Please answer these questions as best you can. A copy of these questions are attached.

You will need to send this information to me before I can take further action on application No. 35-8606.

Sincerely,

Harold W. Jones
Water Resource Supervisor

HWJ:lk

Enclosure

MICROFILMED
MAR 1 8 1991

RECEIVED
MAY 5 1989
Department of Water Resources
Eastern District Office

MEMORANDUM

TO: H.W. JONES

FROM: TIM LUKE

RE: TRUST WATER APPS. 31-7444, 35-8606, 35-8618 & 35-8622

DATE: 5-3-89

==========

The four applications enclosed were originally pulled from your office for my further review here in Boise. I was not sure what to do with these when I originally reviewed files in your office because they were filed on or after 7/1/85 and referenced pre-October, 1984 development.

One of the four apps., 35-8622, was actually filed on 6/28/85 with reference to development existing prior to 10/1/84. This app. is thus completely exempt from any processing under 42-203C and can be advertised. This is similar to the way we have treated other applications from your office in the same category. Please make sure though that there is specific language in the advertisement about pre 10/1/84 development and existing hydropower rights (see memo from Glen Saxton dated 1/3/89).

I will address the three remaining apps. individually:

35-8618 Priority=7/26/85
This a supplemental filing with no expanasion acres. All of the land under this app. is covered by an existing license. This app. can therefore be processed out of sequence but is not entirely exempt from Swan Falls processing due to its post 7/1/85 filing date. In terms of advertising, we need specific language stating that this is a supplemental filing. We should also state that the application alleges that the supplemental water was put to beneficial use prior to 10/1/84. Protests against the filing may be based on the criteria of both 42-203A and 42-203C. When the app. comes to the state office for approval, we will condition it the same as all other trust water applications or reauthorized trust water permits.

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MAR 18 1991

35-8606 and 31-7444 Both with Priority of 7/1/85.

Both of these apps. may be processed out of sequence if the applicants can provide additional evidence, other than the statements in the file, that the lands were irrigated priot to 10/1/84. I realize that this may sound a bit harsh or pickey. In my opinion though, a deadline is a deadline. These folks did not comply with the deadline and the filing therefore should be treated like any other filing made after 7/1/85. I believe that these people were also given ample notice about the filing requirements.

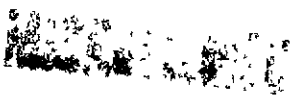
If they submit acceptable evidence, we should proceed as follows:

App. No. 35-8606

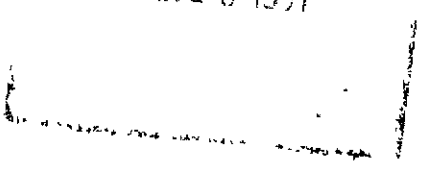
This app. includes an affadavit (signed 6/30/85) stating that the project was completed prior to 10/1/84. Due to its priority date however it is subject to all criteria of Section 42-203C except that the acres under the app. are not counted toward the 20,000 acre/yr. limitation. The app. therefore should be advertised with specific language stating that the applicant alleges that the lands were irrigated prior to 10/1/84. Since the application represents a project greater than 200 acres, the Department is required to request that the applicant submit the information specified under Water Appropriation Rules 4,5,3. and 4,5,3,6. We should request this information prior to any advertising. Again, when the app. comes to the state office for review, we will condition the new permit similar to any other legitimate trust water filing.

App No. 31-7444

This is the same situation above except that the project is under 200 acres and thus is exempt from the additional information requirements of Rules 4,5,3. and 4,5,3,6.



MAR 1 8 1991



35-8606

HINCKS, ROY E.

ROUTE 1 BOX 42, STERLING, ID 83279

Source: GROUNDWATER

Date Filed: 07/01/1985

Diversion Pt: SENW Sec 16 T 04S R 31E

Use: IRRIGATION (6.40 CFS)

In: NENE NWNE SWNE SENE NENW NWNW SWNW SENW Sec 16 T 04S R 31E
FOR 320 ACRES

FILMED
MAR 1 8 1991

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
TRANSFER OF WATER RIGHT
TRANSFER NO. 69806

This is to certify that: RITCHEY TOEVS
2841 W 1800 S
ABERDEEN ID 83210
(208)397-4189

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. 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

Right	Origin/Basis	Priority	Rate	Volume	Acres	Total	Source
35-8626	WR/License	02/13/1986	1.88 cfs	516 af	129.0	543.5	GROUND WATER
35-8606	WR/License	07/01/1985	6.07 cfs	1214 af		543.5	GROUND WATER
35-7920B	WR/License	09/29/1980	0 69 cfs	188 af	47 0	543 5	GROUND WATER
35-7857B	WR/License	05/09/1979	1 28 cfs	256 af	64.0	543.5	GROUND WATER

Purpose of Transfer (Changes Proposed)

Current Number	Split	POD	POU	Add POD	Period of Use	Nature of Use
35-8626	NO	NO	YES	NO	NO	NO
35-8606	NO	NO	YES	NO	NO	NO
35-7920B	NO	NO	YES	NO	NO	NO
35-7857B	NO	NO	YES	NO	NO	NO

Summary of Water Rights After the Approved Change

Existing Right	New No (changed portion)	Transfer Rate	Transfer Volume	Acre Limit	Total Acres	New No. (remaining portion)	Remaining Rate	Remaining Volume	Remaining Acre Limit	Remaining Total Acres
35-8626	**35-8626**	1.88 cfs	516 af	129.0	688.5		N/A	N/A	N/A	N/A
35-8606	**35-8606**	6.07 cfs	1214 af	N/A	688.5		N/A	N/A	N/A	N/A
35-7920B	**35-7920B**	0.69 cfs	188 af	47.0	688.5		N/A	N/A	N/A	N/A
35-7857B	**35-7857B**	1.28 cfs	256 af	64.0	688.5		N/A	N/A	N/A	N/A
TOTALS		**9.92 cfs**	**2174 af**	**543.5**	**688.5**		N/A	N/A	N/A	N/A

Detailed Water Right Description(s) attached

Dated this 21st day of October, 2002

MICROFILMED

OCT 30 2002

Chief, Water Allocation Bureau

WATER RIGHT NO. 35-7857B
As Modified by Transfer No. 69806

In accordance with the approval of Transfer No. 69806, Water Right No. 35-7857B is now described as follows.

Right Holder: WILLIAM R TOEVS
2841 W 1800 S
ABERDEEN ID 83210

Priority Date: May 09, 1979

Source: GROUND WATER

BENEFICIAL USE	From	To	Diversion Rate	Volume
IRRIGATION	04/01	10/31	1.28 CFS	256.0 AF
			1.28 CFS	256.0 AF

LOCATION OF POINT(S) OF DIVERSION:
GROUND WATER SESW Sec. 9 Twp 06S Rge 29E POWER 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	
06S	29E	8	38.0	39.0	40.0	39.0	39.0			39.0					39.0	38.0	37.5	38.0	386.5
06S	29E	9					35.0	38.0	36.0	36.0	39.0	40.0	39.0	39.0					302.0

Total Acres: 688.5

CONDITIONS OF APPROVAL

1. Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code.
2. The right holder shall measure and annually report diversions of water and/or other pertinent hydrologic and system information as required by Section 42-701, Idaho Code.
3. This right is limited to the irrigation of 64 acres within the place of use described above in a single irrigation season.
4. Rights 35-7857B, 35-7920B, 35-8606 and 35-8626 when combined shall not exceed the irrigation of 543.5 acres within the place of use described above in a single irrigation season. Prior to the irrigation season each year, the right holder shall inform the department of the location of the 145 acres that will remain fallow.
5. 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.
6. The right holder shall accomplish the change authorized by this transfer within one (1) year of the date of this approval.
7. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
8. Approval of this transfer does not confirm the validity of this water right.

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 21st day of October, 2002

MICROFILMED
OCT 30 2002

L. Glen Saxton
Chief, Water Allocation Bureau

WATER RIGHT NO. 35-7920B
As Modified by Transfer No. 69806

In accordance with the approval of Transfer No. 69806, Water Right No. 35-7920B is now described as follows.

Right Holder: WILLIAM R TOEVS
2841 W 1800 S
ABERDEEN ID 83210

Priority Date: September 29, 1980

Source: GROUND WATER

BENEFICIAL USE	From	To	Diversion Rate	Volume
IRRIGATION	4/01	10/31	0.69 CFS	188.0 AF
			0.69 CFS	188.0 AF

LOCATION OF POINT(S) OF DIVERSION:
GROUND WATER SESW Sec. 9 Twp 06S Rge 29E POWER 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	
06S	29E	8	38.0	39.0	40.0	39.0	39.0			39.0					39.0	38.0	37.5	38.0	386.5
06S	29E	9					35.0	38.0	36.0	36.0	39.0	40.0	39.0	39.0					302.0

Total Acres: 688.5

CONDITIONS OF APPROVAL

1. Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code.
2. The right holder shall measure and annually report diversions of water and/or other pertinent hydrologic and system information as required by Section 42-701, Idaho Code.
3. Right Nos. 35-07920B and 35-08626 shall not exceed a total combined diversion rate of 5.75 cfs when combined with Right Nos. 35-02540 and 35-07920C.
4. Rights 35-7857B, 35-7920B, 35-8606 and 35-8626 when combined shall not exceed the irrigation of 543.5 acres within the place of use described above in a single irrigation season. Prior to the irrigation season each year, the right holder shall inform the department of the location of the 145 acres that will remain fallow.
5. 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.
6. This right is limited to the irrigation of 47 acres within the place of use described above in a single irrigation season.

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OCT 3 0 2002

WATER RIGHT NO. 35-7920B
As Modified by Transfer No. 69806

CONDITIONS OF APPROVAL

7. The right holder shall accomplish the change authorized by this transfer within one (1) 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. Approval of this transfer does not confirm the validity of this water right.

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 21st day of October, 2002

Chief, Water Allocation Bureau

MICROFILMED

OCT 3 0 2002

WATER RIGHT NO. 35-8606
As Modified by Transfer No. 69806

In accordance with the approval of Transfer No. 69806, Water Right No. 35-8606 is now described as follows.

Right Holder: WILLIAM R TOEVS
2841 W 1800 S
ABERDEEN ID 83210

Priority Date: July 01, 1985

Source: GROUND WATER

BENEFICIAL USE	From	To	Diversion Rate	Volume
IRRIGATION	4/01	10/31	6.07 CFS	1,214.0 AF
			6.07 CFS	1,214.0 AF

LOCATION OF POINT(S) OF DIVERSION:
GROUND WATER SESW Sec. 9 Twp 06S Rge 29E POWER 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	
06S	29E	8	38.0	39.0	40.0	39.0	39.0			39.0					39.0	38.0	37.5	38.0	386.5
06S	29E	9					35.0	38.0	36.0	36.0	39.0	40.0	39.0	39.0					302.0

Total Acres: 688.5

CONDITIONS OF APPROVAL

1. Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code.
2. The right holder shall measure and annually report diversions of water and/or other pertinent hydrologic and system information as required by Section 42-701, Idaho Code.
3. 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.
4. This right is for the use of trust water and is subject to review 20 years after the issuance of the permit to determine availability of water and to re-evaluate the public interest.
5. Rights 35-7857B, 35-7920B, 35-8606 and 35-8626 when combined shall not exceed the irrigation of 543.5 acres within the place of use described above in a single irrigation season. Prior to the irrigation season each year, the right holder shall inform the department of the location of the 145 acres that will remain fallow.
6. The right holder shall accomplish the change authorized by this transfer within one (1) year of the date of this approval.
7. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
8. Approval of this transfer does not confirm the validity of this water right.

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 21st day of October, 2002

R. Keith Higginson
Chief, Water Allocation Bureau

MICROFILMED
OCT 30 2002

WATER RIGHT NO. 35-8626
As Modified by Transfer No. 69806

In accordance with the approval of Transfer No. 69806, Water Right No. 35-8626 is now described as follows.

Right Holder: WILLIAM R TOEVS
2841 W 1800 S
ABERDEEN ID 83210

Priority Date: February 13, 1986

Source: GROUND WATER

BENEFICIAL USE	From	To	Diversion Rate	Volume
IRRIGATION	4/01	10/31	1.88 CFS	516.0 AF
			1.88 CFS	516.0 AF

LOCATION OF POINT(S) OF DIVERSION:
GROUND WATER SESW Sec. 9 Twp 06S Rge 29E POWER 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	
06S	29E	8	38.0	39.0	40.0	39.0	39.0			39.0					39.0	38.0	37.5	38.0	386.5
06S	29E	9					35.0	38.0	36.0	36.0	39.0	40.0	39.0	39.0					302.0

Total Acres: 688.5

CONDITIONS OF APPROVAL

1. Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code.

2. The right holder shall measure and annually report diversions of water and/or other pertinent hydrologic and system information as required by Section 42-701, Idaho Code.

3. 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.

4. This right is for the use of trust water and is subject to review 20 years after the issuance of the permit to determine availability of water and to re-evaluate the public interest.

5. Right Nos. 35-07920B and 35-08626 shall not exceed a total combined diversion rate of 5.75 cfs when combined with Right Nos. 35-02540 and 35-07920C.
This right is limited to the irrigation of 129.O acres in the place of use described above in a single irrigation season.

6. Rights 35-7857B, 35-7920B, 35-8606 and 35-8626 when combined shall not exceed the irrigation of 543.5 acres within the place of use described above in a single irrigation season. Prior to the irrigation season each year, the right holder shall inform the department of the location of the 145 acres that will remain fallow.

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OCT 3 0 2002

WATER RIGHT NO. 35-7920B
As Modified by Transfer No. 69806

CONDITIONS OF APPROVAL

7. This right is limited to the irrigation of 129 acres within the place of use described above in a single irrigation season.

8. The right holder shall accomplish the change authorized by this transfer within one (1) 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. Approval of this transfer does not confirm the validity of this water right.

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 21st day of October, 2002

Chief, Water Allocation Bureau

MICROFILMED

OCT 30 2002

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

TRANSFER OF WATER RIGHT

TRANSFER NO. 5670
WATER RIGHT NO(S). 35-07857B/35-07920B/35-08606/35-08626

This is to certify that: **RITCHEY TOEVS**
2841 W 1800 S
ABERDEEN ID 83210

has requested a change to the above captioned water right(s). This change in water right(s) is authorized pursuant to the provisions of Section 42-222, Idaho Code, provided the conditions listed below are met.

BENEFICIAL USE	PERIOD OF USE	DIVERSION RATE	ANNUAL VOLUME
Right No. 35-07857B :			
IRRIGATION	04/01 to 10/31	1.28 CFS	256.0 AF
Priority: 05/09/1979			
Right No. 35-07920B :			
IRRIGATION	04/01 to 10/31	0.69 CFS *	188.0 AF
Priority: 09/29/1980			
Right No. 35-08606 :			
IRRIGATION	04/01 to 10/31	6.07 CFS	1214.0 AF
Priority: 07/01/1985			
Right No. 35-08626 :			
IRRIGATION	04/01 to 10/31	1.88 CFS *	516.0 AF
Priority: 02/13/1986			
	TOTAL:	**9.92 CFS**	**2174.0 AF**

SOURCE

GROUNDWATER

LOCATION OF POINT(S) OF DIVERSION: SESW , Sec. 9, Township 06S, Range 29E
POWER County

PLACE OF USE: IRRIGATION

TWN	RGE	SEC		ACRES		ACRES		ACRES	TOTAL
06S	29E	8	NENE	38	NWNE	39	SWNE	40	
			SENE	39	NENW	39	SENW	39	
			NESE	39	NWSE	38	SWSE	37.5	
			SESE	38					386.5
		9	NESW	39	NWSW	40	SWSW	39	
			SESW	39					157
					Total number of acres irrigated:				543.5 **

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TRANSFER NO. 5670
WATER RIGHT NO(S). 35-07857B/35-07920B/35-08606/35-08626

CONDITIONS OF APPROVAL AND REMARKS

1. Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code.
2. The right holder shall measure and annually report diversions of water and/or other pertinent hydrologic and system information as required by Section 42-701, Idaho Code.
3. 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.
4. The right holder shall accomplish the change authorized by this transfer within one (1) year of the date of this approval.
5. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.

* 6. Right Nos. 35-07920B and 35-08626 shall not exceed a total combined diversion rate of 5.75 cfs when combined with Right Nos. 35-02540 and 35-07920C.

** 7. Right No. 35-07857B is limited to the irrigation of 64.0 acres in the place of use described above in a single irrigation season.

** 8. Right No. 35-07920B is limited to the irrigation of 47.0 acres in the place of use described above in a single irrigation season.

** 9. Right No. 35-08626 is limited to the irrigation of 129.0 acres in the place of use described above in a single irrigation season.

10. Rights 35-08606 and 35-08626 are for the use of trust water and are subject to review 20 years after the issuance of the permits to determine availability of water and to re-evaluate the public interest.

Dated this 21st day of June, 2000.

L. Rene Sayler
Chief, Water Allocation Bureau

MICROFILMED

JUL 26 2000

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR TRANSFER NO. 5435 IN THE NAME OF STEVE AND DARLA WYBENGA	)))))	**PRELIMINARY ORDER**

T 5435 Wybenga

This matter having come before the Idaho Department of Water Resources (the "Department") as an application for transfer and the Department having held a conference and a hearing in a similar matter involving part of the same water right, the Department enters the following Findings of Fact, Conclusions of Law and Preliminary Order:

FINDINGS OF FACT

1. On May 10, 1995, the Department issued License No. 35-08606 in the name of Roy E. Hincks as follows:

Source:	Groundwater
Priority:	July 1, 1985
Rate of diversion:	6.07 cubic feet per second ("cfs")
Volume:	1214 acre feet per year ("afy")
Point of diversion:	NE1/4NW1/4, Section 16, T4S, R31E, B.M. ("Hincks" well)
Use:	Irrigation
Season of use:	April 1 to October 31
Place of use:	303.5 acres within parts of Section 16, T4S, R31E, B.M.

(Note: The "1/4" designations will be omitted from subsequent legal descriptions in this order).

2. On March 3, 1999, Roy Hincks ("Hincks") agreed to sell 15 miner's inches (0.30 cfs) of water from License No. 36-08606 to Steve Wybenga ("applicant").

3. On March 8, 1999, the applicant filed Application for Transfer No. 5435 ("application") with the Department seeking to change the point of diversion, place of use, season of use and nature of use of a portion of License No. 35-08606. Hincks proposes to cease the diversion of 0.30 cfs and 45 afy of ground water from the Hincks well and to allow the water to be diverted from the applicant's existing well located in Section 30, T5S, R13E, B.M. in Gooding County, Idaho. The applicant proposes to use the water in an existing dairy facility diverting the water from a well which is located down gradient of the licensed well a distance of approximately 90 miles.

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JUL 26 2000

4. The Department published notice of the application which was protested by several parties.

5. On July 27 and 28, 1999, the Department conducted a hearing in the matter of Application for Transfer No. 5436 in the name of Jerome Cheese Company. The application of Jerome Cheese Company involved a portion of water right 35-08606 in a proposed transfer which is similar to Application for Transfer No. 5435. As a result of the hearing, the Department denied Application for Transfer No. 5436 as not being in the local public interest.

6. The majority of water not pumped at the Hincks well is tributary to springs which enter the Snake River in the Blackfoot to Neeley reach or below Neeley. Some of the unpumped water will go west in the aquifer but ground water reaching the Snake River will not again be available as ground water in the Snake Plain Aquifer.

7. On May 15, 1992, the Director issued a moratorium order curtailing the use of surface and ground water within the Snake River Basin upstream from the USGS gauge on the Snake River near Weiser, Idaho ("Snake Plain Aquifer"). The moratorium was issued to prevent further development of water resources in the Snake Plain Aquifer to ensure compliance with provisions of chapter 2, title 42, Idaho Code. The Director subsequently amended the moratorium order on January 6, 1993 and April 30, 1993.

CONCLUSIONS OF LAW

1. Section 42-222, Idaho Code, provides in pertinent part as follows:

> 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, and 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 42-203A(5), Idaho Code; ....

2. Section 42-1805(7), Idaho Code, and IDAPA 37.03.08055 (Water Appropriation Rule 55) provide for the establishment of a moratorium preventing further development of a water resource in a designated area to ensure compliance with provisions of chapter 2, title 42, Idaho Code.

3. The moratorium designated by the Department on May 15, 1992 for the Snake Plain Aquifer was issued to prevent further development of water sources on the plain in order to protect prior water rights and to ensure compliance with provisions of chapter 2, title 42, Idaho Code.

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JUL 26 2000

4. The proposed point of diversion by the applicant for the dairy is within the Snake Plain Aquifer area. Since only a small unquantified portion of ground water which would not be pumped at the Hincks well would reach the proposed new well located about 90 miles to the southwest, the diversion of 0.30 cfs or the majority thereof at the proposed new well would have the same physical effect as a new appropriation of ground water and would cause injury because it would have a senior priority over validly established water rights held by junior appropriators.

5. It is not in the local public interest to approve a transfer that would essentially be a new appropriation of water which would otherwise be prevented by the moratorium.

6. The Department should deny the application.

ORDER

IT IS THEREFORE, hereby ORDERED that Application for Transfer No. 5435 in the name of Steve and/or Darla Wybenga is **DENIED**.

Signed this 25th day of May, 2000.

L. GLEN SAXTON, Chief
Water Allocation Bureau

MICROFILMED
JUL 26 2000

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25th day of May, 2000, the above and foregoing document was served upon the following by placing a copy of the same in the United States Mail, postage prepaid and properly addressed to the following:

Steve Wybenga
Darla Wybenga
662 Spring Cove Rd.
Bliss, ID 83314

Deborah Drew-Ellis
Administrative Assistant
Water Allocation Bureau

MICROFILMED
JUL 26 2000

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR TRANSFER NO. 5466 IN THE NAME OF ARDEL WICKEL

PRELIMINARY ORDER

T5466 Ardel Wickel

This matter having come before the Idaho Department of Water Resources (the "Department") as an application for transfer and the Department having held a conference and a hearing in a similar matter involving part of the same water right sought for transfer, the hearing officer enters the following Findings of Fact, Conclusions of Law and Preliminary Order:

FINDINGS OF FACT

1. On May 10, 1995, the Department issued License No. 35-08606 in the name of Roy E. Hincks as follows:

Source:	Groundwater
Priority:	July 1, 1985
Rate of diversion:	6.07 cubic feet per second ("cfs")
Volume:	1214 acre feet per year ("afy")
Point of diversion:	NE1/4NW1/4, Section 16, T4S, R31E, B.M. ("Hincks" well)
Use:	Irrigation
Season of use:	April 1 to October 31
Place of use:	303.5 acres within parts of Section 16, T4S, R31E, B.M.

(Note: The "1/4" designations will be omitted from subsequent legal descriptions in this order).

2. On March 22, 1999, Roy Hincks agreed to sell 2.27 cfs and 454 afa of water from License No. 35-08606 to Ardel Wickel ("applicant").

3. On April 21, 1999, the applicant filed Application for Transfer No. 5466 ("application") with the Department seeking to change the point of diversion, place of use, season of use and nature of use of a portion of License No. 35-08606. The applicant proposes to cease the diversion of 2.27 cfs and 454 afy of ground water from the Hincks well and to divert the water from one or two wells located in Section 20, T10S, R25E, B.M. in Cassia County, Idaho. The applicant proposes to use the water for irrigation diverting the water from wells which are located down gradient a distance of approximately 50 miles in a southwesterly direction from the Hincks well.

MICROFILMED
JUL 26 2000

4. The Department published notice of the Application which was not protested.

5. On July 27 and 28, 1999, the Department conducted a hearing in the matter of Application for Transfer No. 5436 in the name of Jerome Cheese Company. The application of Jerome Cheese Company involved a portion of water right 35-08606 in a proposed transfer which is factually similar to the application of the applicant. As a result of the hearing, the Department denied Application for Transfer No. 5436 as not being in the local public interest.

6. The majority of water not pumped at the Hincks well is tributary to springs which enter the Snake River in the Blackfoot to Neeley reach or below Neeley and will not again be available to pump as groundwater. Pumping of the well(s) as proposed in the application will deplete surface water flow in the Snake River in the Kimberly to King Hill reach by an estimated 0.77 cfs.

7. On May 15, 1992, the Director issued a moratorium order curtailing the use of surface and ground water within the Snake River Basin upstream from the USGS gauge on the Snake River near Weiser, Idaho ("Snake Plain Aquifer"). The moratorium was issued to prevent further development of water resources in the Snake Plain Aquifer to ensure compliance with provisions of chapter 2, title 42, Idaho Code. The Director subsequently amended the moratorium order on January 6, 1993 and April 30, 1993.

CONCLUSIONS OF LAW

1. Section 42-222, Idaho Code, provides in pertinent part as follows:

> 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, and 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 42-203A(5), Idaho Code; ....

2. Section 42-1805(7), Idaho Code, and IDAPA 37.03.08055 (Water Appropriation Rule 55) provide for the establishment of a moratorium preventing further development of a water resource in a designated area to ensure compliance with provisions of chapter 2, title 42, Idaho Code.

3. The moratorium designated by the Department on May 15, 1992 for the Snake Plain Aquifer was issued to prevent further development of water sources on the plain in order to protect prior water rights and to ensure compliance with provisions of chapter 2, title 42, Idaho Code.

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4. The proposed point of diversion by the applicant is within the Snake Plain Aquifer area. The diversion of 2.27 cfs or the majority thereof at the proposed new well(s) would have the same physical effect as a new appropriation of ground water and would cause injury to senior surface water users because it would have a senior priority over validly established water rights held by junior appropriators and would deplete the available flow in the Snake River in the Kimberly to King Hill reach.

5. It is not in the local public interest to approve a transfer that would deplete surface water and would essentially be a new appropriation of water which would otherwise be prevented by the moratorium.

6. The Department should deny the application.

ORDER

IT IS THEREFORE, hereby ORDERED that Application for Transfer No. 5466 in the name of Ardel Wickel is **DENIED**.

Signed this 28th day of December, 1999.

L. GLEN SAXTON, Chief
Water Allocation Bureau

MICROFILMED
JUL 26 2000

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR TRANSFER NO. 5437 IN THE NAME OF JOE AGUEDA	))))	**PRELIMINARY ORDER**

T5437 Joe Agueda

This matter having come before the Idaho Department of Water Resources (the "Department") as an application for transfer and the Department having held a conference and a hearing in a similar matter involving part of the same water right, the hearing officer enters the following Findings of Fact, Conclusions of Law and Preliminary Order:

FINDINGS OF FACT

1. On May 10, 1995, the Department issued License No. 35-08606 in the name of Roy E. Hincks as follows:

Source:	Groundwater
Priority:	July 1, 1985
Rate of diversion:	6.07 cubic feet per second ("cfs")
Volume:	1214 acre feet per year ("afy")
Point of diversion:	NE1/4NW1/4, Section 16, T4S, R31E, B.M. ("Hincks" well)
Use:	Irrigation
Season of use:	April 1 to October 31
Place of use:	303.5 acres within parts of Section 16, T4S, R31E, B.M.

(Note: The "1/4" designations will be omitted from subsequent legal descriptions in this order).

2. On March 9, 1999, Roy Hincks ("Hincks") and Joe Agueda ("applicant") entered into a Memorandum of Agreement in which Hincks agreed to sell 15 miner's inches (0.30 cfs) of water from License No. 36-08606 to the applicant.

3. On March 18, 1999, the applicant filed Application for Transfer No. 5437 ("application") with the Department seeking to change the point of diversion, place of use, season of use and nature of use of a portion of License No. 35-08606. The applicant proposes to cease the diversion of 0.30 cfs and 45 afy of ground water from the Hincks well and to divert the water from two new wells to be drilled in the SESW Section 27, T7S, R17E, B.M. near Jerome, Idaho. The applicant proposes to use the water in an existing dairy facility diverting the water from wells which are located down gradient of the licensed well a distance of approximately 90 miles near Jerome, Idaho.

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4. The Department published notice of the Application which was not protested.

5. On July 27 and 28, 1999, the Department conducted a hearing in the matter of Application for Transfer No. 5436 in the name of Jerome Cheese Company. The application of Jerome Cheese Company involved a portion of water right 35-08606 in a proposed transfer which is factually similar to the application of the applicant. As a result of the hearing, the Department denied Application for Transfer No. 5436 as not being in the local public interest.

6. The majority of water not pumped at the Hincks well is tributary to springs which enter the Snake River in the Blackfoot to Neeley reach or below Neeley. Some of the unpumped water will go west in the aquifer but ground water reaching the Snake River will not again be available as ground water in the Snake Plain Aquifer.

7. On May 15, 1992, the Director issued a moratorium order curtailing the use of surface and ground water within the Snake River Basin upstream from the USGS gauge on the Snake River near Weiser, Idaho ("Snake Plain Aquifer"). The moratorium was issued to prevent further development of water resources in the Snake Plain Aquifer to ensure compliance with provisions of chapter 2, title 42, Idaho Code. The Director subsequently amended the moratorium order on January 6, 1993 and April 30, 1993.

CONCLUSIONS OF LAW

1. Section 42-222, Idaho Code, provides in pertinent part as follows:

> 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, and 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 42-203A(5), Idaho Code; ....

2. Section 42-1805(7), Idaho Code, and IDAPA 37.03.08055 (Water Appropriation Rule 55) provide for the establishment of a moratorium preventing further development of a water resource in a designated area to ensure compliance with provisions of chapter 2, title 42, Idaho Code.

3. The moratorium designated by the Department on May 15, 1992 for the Snake Plain Aquifer was issued to prevent further development of water sources on the plain in order to protect prior water rights and to ensure compliance with provisions of chapter 2, title 42, Idaho Code.

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JUL 2 6 2000

4. The proposed point of diversion by the applicant for the dairy is within the Snake Plain Aquifer area. Since only a small unquantified portion of ground water which would not be pumped at the Hincks well would reach the proposed new well(s) located about 90 miles to the southwest, the diversion of 0.30 cfs or the majority thereof at the proposed new well(s) would have the same physical effect as a new appropriation of ground water and would cause injury because it would have a senior priority over validly established water rights held by junior appropriators.

5. It is not in the local public interest to approve a transfer that would essentially be a new appropriation of water which would otherwise be prevented by the moratorium.

6. The Department should deny the application.

ORDER

IT IS THEREFORE, hereby ORDERED that Application for Transfer No. 5437 in the name of Joe Agueda is **DENIED**.

Signed this 13th day of December, 1999.

L. GLEN SAXTON, Chief
Water Allocation Bureau

MICROFILMED
JUL 26 2000

CERTIFICATE OF MAILING

I DO HEREBY CERTIFY that on the 14th day of December, 1999, a true and correct copy of the foregoing **PRELIMINARY ORDER** was forwarded, by regular U.S. Mail, to the parties listed below:

Joe Agueda
326 E 400 N
Jerome ID 83338

Julie L. Yarbrough

JULIE L. YARBROUGH, Administrative Assistant
Water Allocation Bureau

MICROFILMED

JUL 26 2000

MEMORANDUM

TO: **FILE** 35-08606

FROM: **VAULT**

RE: **TRANSFER #** 69806

DATE: 6-12-02

= =

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

FILE # 35-07857

MICROFILMED
OCT 3 ? 2002

MEMORANDUM

TO: **FILE** 35-08606

FROM: **VAULT**

RE: **TRANSFER #** 5670

DATE: 3/9/00

= =

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

FILE # 35-07857

MICROFILMED
JUL 26 2000

Z 269 224 876

US Postal Service

Receipt for Certified Mail

No Insurance Coverage Provided

Do not use for International Mail *(See reverse)*

Sent to Steve Wybenga	
Street & Number 6662 Spring Cove Rd	
Post Office, State, & ZIP Code Bliss, Id 83314	
Postage	$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered	
Return Receipt Showing to Whom, Date, & Addressee's Address	
TOTAL Postage & Fees	$

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JUL 26 2000

Postmark or Date

5/25/00

PS Form **3800**, April 1995

Stick postage stamps to article to cover First-Class postage, certified mail fee, and charges for any selected optional services *(See front)*

1 If you want this receipt postmarked, stick the gummed stub to the right of the return address leaving the receipt attached, and present the article at a post office service window or hand it to your rural carrier *(no extra charge)*

2 If you do not want this receipt postmarked, stick the gummed stub to the right of the return address of the article, date, detach, and retain the receipt, and mail the article

3 If you want a return receipt, write the certified mail number and your name and address on a return receipt card, Form 3811, and attach it to the front of the article by means of the gummed ends if space permits Otherwise, affix to back of article Endorse front of article **RETURN RECEIPT REQUESTED** adjacent to the number

4 If you want delivery restricted to the addressee, or to an authorized agent of the addressee, endorse **RESTRICTED DELIVERY** on the front of the article

5 Enter fees for the services requested in the appropriate spaces on the front of this receipt If return receipt is requested, check the applicable blocks in item 1 of Form 3811

6 Save this receipt and present it if you make an inquiry **102595-99-M-0079**

PS Form **3800**, April 1995 *(Reverse)*

Is your RETURN ADDRESS completed on the reverse side?

SENDER:

- ☐ Complete items 1 and/or 2 for additional services
  Complete items 3, 4a, and 4b
- ☐ Print your name and address on the reverse of this form so that we can return this card to you
- ☐ Attach this form to the front of the mailpiece, or on the back if space does not permit
- ☐ Write *"Return Receipt Requested"* on the mailpiece below the article number
- ☐ The Return Receipt will show to whom the article was delivered and the date delivered

I also wish to receive the following services (for an extra fee)

1 ☐ Addressee's Address
2 ☐ Restricted Delivery

3 Article Addressed to:

STEVE WYBENGA
DARLA WYBENGA
662 SPRING COVE RD
BLISS ID 83314

4a Article Number
Z 269 224 876

4b Service Type
☐ Registered ☑ Certified
☐ Express Mail ☐ Insured
☐ Return Receipt for Merchandise ☐ COD

7 Date of Delivery
5/31/00

5 Received By: *(Print Name)*
Steve Wybenga

8 Addressee's Address *(Only if requested and fee is paid)*

6 Signature *(Addressee or Agent)*

T5435

MICROFILMED JUL 26 2000

PS Form **3811**, December 1994 102595-99-B-0223 Domestic Return Receipt

Thank you for using Return Receipt Service.

UNITED STATES POSTAL SERVICE

First-Class Mail
Postage & Fees Paid
USPS
Permit No G-10

BLISS, ID
MAY - 1 2003
83314

• Print your name, address, and ZIP Code in this box •

DEBORAH DREW-ELLIS
DEPARTMENT OF WATER RESOURCES
1301 N. ORCHARD ST.
BOISE, ID 83706-2237.

MICROFILMED
JUL 25 2003

May 25, 2000

Copies of all Orders must be forwarded to:

IDWR NORTHERN - Bob Haynes

SOUTHERN - Allen Merritt

EASTERN - Ron Carlson / Skip Jones

WESTERN - Gary Spackman

SALMON OFFICE - Bob Foster

Legal Division - Phil Rassier

Adjudication Bureau - Dave Tuthill

Information Officer - Dick Larsen

Water Allocation Bureau - Glen Saxton

Water Distribution Section - Tim Luke

Water Permits Section - Jeff Peppersack / Shelley Keen

Administration - Norm Young

Planning - Bill Graham

AG's Office - David Barber

One copy is routed to:

Darla Block
Vault
Sharla Curtis
Burke Scholer
Dayna Ball
Pam Skaggs
Kay Walker
Kari Lynn Townsend
Cindy Hodges

MICROFILMED
JUL 26 2000

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098
Phone: (208) 327-7900 FAX: (208) 327-7866

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

May 25, 2000

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Steve Wybenga
Darla Wybenga
662 Spring Cove Rd.
Bliss, ID 83314

Re: Transfer Nos. 5435

Dear Transfer Applicant:

The Department of Water Resources (department) has issued the enclosed **Preliminary Order** pursuant to section 67-5243, Idaho Code. **It can and will become a final order without further action of the Department unless a party petitions for reconsideration or files an exception and/or brief as described in the enclosed information sheet.**

Please note that water right owners are required to report any change of water right ownership and/or change of mailing address to the department within 120 days of the change. Failure to report these changes could result in a $100 late filing fee. Contact any office of the department or visit our homepage on the Internet to obtain the proper reporting form.

If you have any questions, please call me at (208)327-7953.

Sincerely,

Deborah Drew-Ellis

Deborah Drew-Ellis
Administrative Assistant
Water Allocation Bureau

Enclosures
Cc: Pat Brown (w/enclosures)

MICROFILMED

JUL 2 6 2000

T5435 – Wybenga

Database Updated 06-09-2000
GS

EXPLANATORY INFORMATION TO ACCOMPANY A PRELIMINARY ORDER

(Required by Rule of Procedure 730.02)

The accompanying order or approved document is a "**Preliminary Order**" issued by the department pursuant to section 67-5243, Idaho Code. It can and will become a final order without further action of the Department of Water Resources (department) unless a party petitions for reconsideration, files an exception and brief, or requests a hearing as further described below:

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a preliminary order with the department within fourteen (14) days of the service date of this order. The department will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Section 67-5243(3) Idaho Code.

EXCEPTIONS AND BRIEFS

Within fourteen (14) days after (a) the service date of a preliminary order, (b) the service date of a denial of a petition for reconsideration from this preliminary order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this preliminary order, any party may in writing support or take exceptions to any part of a preliminary order and may file briefs in support of the party's position on any issue in the proceeding with the Director. Otherwise, this preliminary order will become a final order of the agency.

REQUEST FOR HEARING

Unless a right to a hearing before the department or the Idaho Water Resource Board ("Board") is otherwise provided by statute, any person aggrieved by any decision, determination, order or action of the Director of the department and who has not previously been afforded an opportunity for a hearing on the matter may request a hearing pursuant to section 42-1701A(3), Idaho Code. A written petition contesting the action of the Director and requesting a hearing shall be filed within fifteen (15) days after receipt of the denial or conditional approval.

ORAL ARGUMENT

If the Director grants a petition to review the preliminary order, the Director shall allow all parties an opportunity to file briefs in support of or taking exceptions to the preliminary order and may schedule oral argument in the matter before issuing a final order If oral arguments are to be heard, the Director will within a reasonable time period notify each party of the place, date and hour for the argument of the case. Unless the Director orders otherwise, all oral arguments will be heard in Boise, Idaho.

MICROFILMED

JUL 2 6 2000

Fax 825-5063

Seed Commercial

MICROFILMED
JUL 2 6 2000

(Del) Kohtz Potatoes
Bonded Dealer

1135 Valley Road So.
Eden, Idaho 83325

(208) 825-5617

Page 1 of 7

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

Transfer No. 5435

RECEIVED
MAR 08 1999
Department of Water Resources
Southern Region

RECEIVED
DEC 29 1999
Department of Water Resources

APPLICATION FOR TRANSFER OF WATER RIGHT

PART 1

Name of applicant Steve &/or Dark Wybenga Phone 208-352-1166

Post Office address 662 Spring Cove Rd Bliss, ID. 83314

A. PURPOSE OF TRANSFER

1. ☒ Change point of diversion ☒ Add diversion point(s) (EXISTING) ☒ Change place of use
   ☒ Change nature of use ☒ Change period of use ☒ Other SPLIT RIGHT

2. Describe the reason for the proposed changes provide water for existing Dairy (cow)

DENIED Order dated 5-25-2000

B. DESCRIPTION OF RIGHT(S) OR PORTION THEREOF, AFTER THE REQUESTED CHANGE

1.

Right Number	Priority	Amount (cfs/ac-ft)	Nature of Use	Period of Use
35-08606B	07/01/1985	2.30cfs/45AC-FT	STOCKWATER	01/01 to 12/31
		0.30cfs/45AC-FT	COMMERCIAL	01/01 to 12/31
37-11191	01/01/1955	0.04 cfs	DOMESTIC	01/01 to 12/31
		0.06 cfs	STOCKWATER	01/01 to 12/31

2. Total amount of water being transferred 0.36 cubic feet per second and/or 52.0 acre-feet per annum.

3. Source of water GROUNDWATER tributary to

4. Point(s) of Diversion:

DENIED 5-25-2000

Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion
		SW	SE	30	05S	13E	GOODING	TWO EXISTING WELLS

5. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	
05S	13E	30															S/C		
											MICROFILMED								

DENIED Order dated 5-25-2000

T...

Transfer No. 5435

PART 1

6. General Information

a. Description of diversion system TWO EXISTING WELLS, ONE SERVES AS BACKUP, PUMPS AND PIPES TO BARN AND CORRALS

b. Are the lands from which you propose to transfer the water right subject to any liens, deeds of trust, mortgages, or contracts? _____ Yes X No. If yes, provide a notarized statement from the holder of the lien, deed of trust, mortgage or contract agreeing to the proposed changes.

c. Describe the affect on the land now irrigated if the place of use is changed pursuant to this transfer:

15 ACRES WILL BE DRIED UP, AND NO LONGER IRRIGATED

d. Remarks:

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Transfer of Water Rights No. _____

And said application is hereby _____, subject to the following limitations and conditions:

Witness my hand this _____ day of _____, 19____.

MICROFILMED
JUL 26 2000

PART 2

A. DESCRIPTION OF RIGHT AS RECORDED:

Water Right No. **35-08606**

STAGE: LICENSE

BENEFICIAL USE	PERIOD OF USE	DIVERSION RATE	ANNUAL VOLUME
IRRIGATION	04/01 to 10/31	6.07 CFS	1214.0 AF

SOURCE

GROUNDWATER

Priority: 07/01/1985

LOCATION OF POINT(S) OF DIVERSION: NENW , Sec. 16, Township 04S, Range 31E
BINGHAM County

PLACE OF USE: IRRIGATION

TWN	RGE	SEC		ACRES		ACRES		ACRES	TOTAL
04S	31E	16	NENE	37	NWNE	40	SWNE	40	
			SENE	36	NENW	40	NWNW	34.2	
			SWNW	36.3	SENW	40			303.5
					Total number of acres irrigated:				303.5

CONDITIONS/REMARKS:

1. This right is for the use of trust water and is subject to review 20 years after the issuance of the permit to determine availability of water and to re-evaluate the public interest.
2. Diversion and use of water under this right is subject to an annual use fee if rules are subsequently promulgated which provide for the submittal of the fee.
3. The Director retains jurisdiction of the right and may change, add, or remove any requirement as determined to be appropriate.
4. This right when combined with all other rights shall provide no more than .02 cfs per acre nor more than 4.0 afa per acre for irrigation of the lands above.

MICROFILMED
JUL 26 2000

PART 2

Transfer No 5435

10. To your knowledge, has any portion of this water right undergone a period of five or more consecutive years of non-use?

NO If yes, describe _____

B. DESCRIPTION OF PORTION OF RIGHT BEING TRANSFERRED

(If the entire right is to be changed by the applicant, omit part B and C.)

1. amount 0.30 cfs (cfs/ac-ft) for IRRIGATION purposes from 04/01 to 10/31
   amount _____ (cfs/ac-ft) for _____ purposes from _____ to _____
   amount _____ (cfs/ac-ft) for _____ purposes from _____ to _____

2. Point(s) of Diversion:

Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion
		NE	NW	16	04S	31E	BINGHAM	

3. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	
04S	31E	16		7.5			7.5												15

Total acres 15

C. DESCRIPTION OF UNCHANGED PORTION OF RIGHT *(omit if there is no change)*

1. amount 5.77 cfs (cfs/ac-ft) for IRRIGATION purposes from 04/01 to 10/31
   amount _____ (cfs/ac-ft) for _____ purposes from _____ to _____
   amount _____ (cfs/ac-ft) for _____ purposes from _____ to _____

2. Point(s) of Diversion:

Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion
		NE	NW	16	04S	31E	BINGHAM	

3. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	
04S	31E	16	37	32.5	40	36	32.5	34.2	36.3	40									288.5

MICROFILMED JUL 26 2000

Total acres 288.5

TRANS NO. 5435

PART 2

A. DESCRIPTION OF RIGHT AS RECORDED:

Claim No. 37-11191

STAGE: BENEFICIAL USE

BENEFICIAL USE	PERIOD OF USE	DIVERSION RATE
STOCKWATER	01/01 to 12/31	0.06 CFS
DOMESTIC	01/01 to 12/31	0.04 CFS
	Totals	0.06 CFS

SOURCE

GROUNDWATER

Priority: 01/01/1955

LOCATION OF POINT(S) OF DIVERSION: SWSWSE , Sec. 30, Township 05S, Range 13E GOODING County

PLACE OF USE: STOCKWATER

TWN	RGE	SEC	
05S	13E	30	SWSE

PLACE OF USE: DOMESTIC

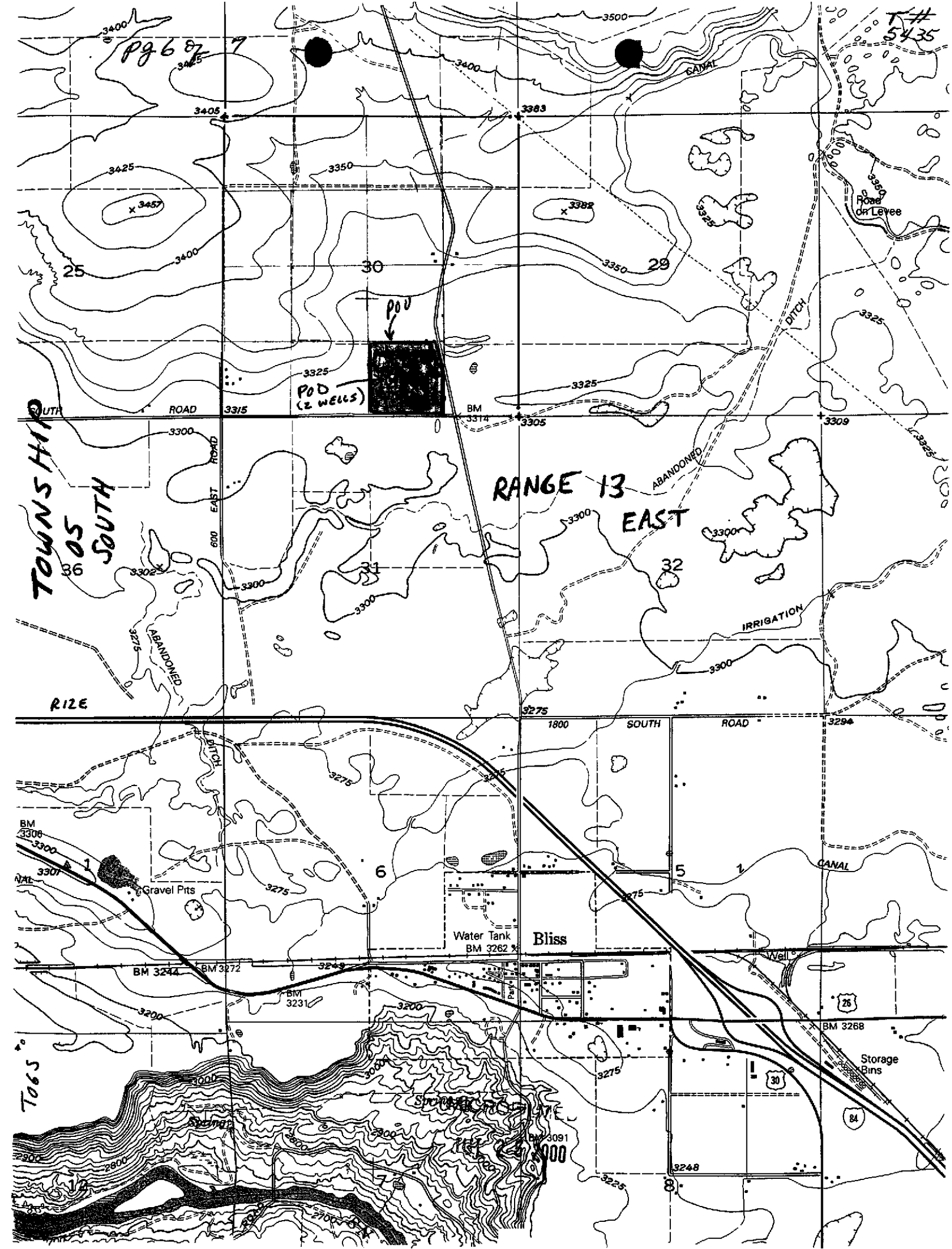
TWN	RGE	SEC	
05S	13E	30	SWSE

CONDITIONS/REMARKS:

1. THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT IS NOT A DETERMINATION OF HISTORICAL BENEFICIAL USE.
2. THE QUANTITY OF WATER UNDER THIS RIGHT SHALL NOT EXCEED 13,000 GALLONS PER DAY.
3. PARCEL NO. 05S13E309010A
   STOCKWATER, 150 BEEF & DAIRY STOCK

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JUL 26 2000


T# 5435
Pg 6 of 7
POD
POD (2 WELLS)
TOWNSHIP 05 SOUTH
RANGE 13 EAST
ROAD
EAST
600
SOUTH
1800
ABANDONED
DITCH
CANAL
IRRIGATION
Road on Levee
Gravel Pits
Water Tank
BM 3262
Bliss
Well
Storage Bins
BM 3268
BM 3244
BM 3272
BM 3231
BM 3306
BM 3314
BM 3091
Spring
3400
3350
3300
3275
3250
3225
3200
3175
3150
3125
3100
3075
3050
3025
3000
2975
2950
2925
2900
2875
2850
2825
2800
2775
2750
2725
2700
3405
3383
3457
3382
3315
3305
3309
3302
3294
3248
1
5
6
7
8
25
29
30
31
32
36
26
30
84

 Transfer No. 5435

PART 3

B. CHANGES IN NATURE OF USE

1	New Nature of Use	Amount (cfs/ac-ft)	Hours/days/year	Period of Use
	STOCKWATER	0.30 cfs/45 AC-FT	AS NEEDED	01/01 to 12/31
	COMMERCIAL	0.30 cfs/45 AC-FT	AS NEEDED	01/01 to 12/31

2. Quantity and quality of return flows and location of discharge:

ALL WATER STAYS ON MY PROPERTY

3. Describe effects on other water uses resulting from the proposed change:

SHOULD BE NONE

I hereby assert that no one will be injured by such change and that the change does not constitute an enlargement in use of the original right. The information contained in this application is true to the best of my knowledge.

I understand that any willful misrepresentations made in this application may result in voiding its approval.

(Signature of Applicant)

Subscribed and sworn to before me this 8th day of MARCH, 1999.

(Notary Public)

My commission expires 12/7/2000

FOR DEPARTMENT USE ONLY

Transfer contains 7 pages and 3 attachments

Received by C. SKINNER Date 03/08/1999 Protest filed by

Prelim. check by ASKINNER Fee $100.00 S021848

Receipted by C. SKINNER Date 03/08/1999

Published in The Morning News & Gooding Co Leader Copies of protest forwarded by

Pub. dates 4/15 & 4/22/99 Hearing held by Date

Watermaster recommendation requested on N/A Recommended for ☐ approval ☐ denial

rec'd. by

Copy of transfer sent to lien holder

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JUL 26 2000

IDAHO DEPARTMENT OF WATER RESOURCES

TRANSFER # 5435

T35-08606B & T37-11191

POST TRANSFER CONDITIONS

RANGE 13 EAST

T05S





- POINT OF DIVERSION
- RESULTING PLACE OF USE
- QUARTER/QUARTER LINES
- SECTION LINES

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JUL 26 2000

PLACE OF USE PRESENTATION
1987/1988 NAPP PHOTOGRAPHY
DATA ENTRY BY COREY SKINNER

—Cross hatched areas in NE¼ NW¼ - 7.5 acres
NW¼ NE¼ 7.5 acres

N

Mainline

Road

Ray Hicks property right of way 1.4 acres in NW¼ NE¼ Sec 11 T45N R21E 35-08806

MICROFILMED
JUL 26 2000

T-#5435

MAKE CHECK PAYABLE TO:
GOODING COUNTY TAX COLLECTOR
FAE CHRISTOPHERSON 934-5673
P.O. BOX 326
GOODING, IDAHO 83330

1998 TAX BILL/RECEIPT

PARCEL NUMBER
RP05S13E308400

BILL# 6160 CODE AREA 8-00

L			23,50
I			87,80
TOT MV			111,31
TOT ACS			39.42:

1ST HALF DUE		2ND HALF DUE		FULL DUE	
TAX	623.00	TAX	623.00	TAX	1,246.00
LATE		LATE		LATE	
INT		INT		INT	
COST		COST		COST	
TOT		TOT		TOT	

WYBENGA STEVE &
WYBENGA DARLA
622 SPRING COVE ROAD
BLISS ID 83314

T 5S R 13E SEC 30
SW4 SE4 LESS TAX 2
3 SW

TAXING DISTRICT	RATE	AMOUNT
STATE	.000000000	
COUNTY	.003802215	423.22
BLISS SCH 234	.003516856	391.46
BLISS HWY DIS	.001110962	123.66
HAGERMAN CEM.	.000082851	9.22
BLISS FIRE	.000659099	73.36
GOODING HOSP	.000723773	80.56
DISTRICT TOTAL	.009895756	1,101.48
AM FALLS #1		30.52
LANDFILL FEE		114.00
AMOUNT DUE		1,246.00

622 SPRING COVE RD 83314

★ ★ ★ IMPORTANT ★ ★ ★
PLEASE READ BOTH FRONT AND BACK
★ ★ ★ MONTHLY PAYMENTS ARE ACCEPTED ★ ★ ★

PAYMENTS RECEIVED WITH A DELINQUENCY WILL BE APPLIED TO THE OLDEST DELINQUENT YEAR.

TO AVOID LATE CHARGES, PAYMENTS MUST BE RECEIVED OR POSTMARKED BY THE DUE DATE

KEEP TOP PORTION FOR YOUR RECORDS.

PERSONAL CHECKS ARE YOUR RECEIPT SUBJECT TO BANK CLEARANCE

1/ F__DATE_____CASH/CK_____BY_____
1_____DATE_____CASH/CK_____BY_____

Wybenga

MAR-04-99 10:16 AM DEL.KOHTZ 208 825 5063 P.03

MICROFILMED
JUL 26 2000

T #5435

RECEIVED
MAR 0 3 1999
Department of Water Resources
Southern Region

AGREEMENT FOR PURCHASE AND SALE OF WATER PERMIT

THIS AGREEMENT is made and entered into this 3rd day of March by and between Del Kelly (hereinafter ~~"Seller"~~ Buyer), and Roy Hancks (hereinafter ~~"Buyer"~~ Seller).

03/08/99 VERIFIED THAT ROY HINCKS OWNS N½ OF SECTION 16 (T04S, R 31E) WITH BINGHAM COUNTY ASSESSOR'S OFFICE. C. SKINNER

TERMS AND CONDITIONS

1. The Sellers, in consideration of the terms contained herein, do hereby contract and agree to sell and convey to the Buyers and fthe Buyers do hereby agreo to buy from the Sellers Idaho Water License #35-08606 and ~~"~~ water appurtenant thereto

2. The total purchase price is $7,15" for 1 water or 15 acres 1/ Water transferred. The entire purchase price shall be paid on the closing date described in paragraph 5 below

3 This Agreement for Purchase and Sale of said license is contingent upon and subject to approval of the application for transfer by the Department of Water Resources. If the application is not approved, this Agreement shall become null and void.

4. The closing of this transaction and delivery of the executed Assignment to Buyer and the entire purchase price to Seller shall take place at the law offices of Ling, nielsen and Robinson, 615 H Street, Rupert, Idaho, within thirty days of Buyer's receipt of approval from the Department of Water Resources

MICROFILMED
MAR 2 2000

T#5435

5. The buyers shall be given posession and use of the water license and the water appurtenant thereto, upon closing.

6. In the event the buyers are unable to close this transaction for any reason, the Buyers agree that they will execute any documents necessary to transfer the water license back to the sellers.

7. In the event of any suit or proceeding by either party against the other party, in any way arising out of this agreement, the prevailing party shall be awarded their reasonable attorney fees and costs.

8. Each party agrees to pay one-half of any costs incurred in closing this agreement. not more than $50.00 for each DK

9. This agreement shall be binding upon and shall inure to the benefit of the heirs, personal representatives, administrators, successors and assigns of the parties hereto.

OTHER PROVISIONS

LEGAL DESCRIPTIONS, BUYER

LEGAL DESCRIPTIONS, SELLER NE 1/4 NW 1/4 Sec 16 T 4S R 3 E Bingham Cty.

MICROFILMED
JUL 26 2000

OTHER PROVISIONS

IN WITNESS WHEREOF the parties have caused their names to be subscribed on the dates set forth above.

SELLERS

BUYERS

MICROFILMED

JUL 26 2000

RECEIVED
MAR 0 3 1999
Department of Water Resources
Southern Region

AGREEMENT FOR PURCHASE AND SALE OF WATER PERMIT

THIS AGREEMENT is made and entered into this 2nd day of March, by and between Delbert Kohtz, (hereinafter ~~"Seller"~~), Steve Nyberg, hereinafter ~~"Buyer"~~).

TERMS AND CONDITIONS

1. The Sellers, in consideration of the terms contained herein, do hereby contract and agree to sell and convey to the Buyers and fthe Buyers do hereby agree to buy from the Sellers Idaho Water License # 35-07866 and the water appurtenant thereto.

2. The total purchase pri~~ce~~ For 15th of water or 15 acres of ~~land~~ water transferred — 00
The entire purchase price shall be paid on the closing date described in paragraph 5 below

3 This Agreement for Purchase and Sale of said license is contingent upon and subject to approval of the application for transfer by the Department of Water Resources. If the application is not approved, this Agreement shall become null and void.

4. The closing of this transaction and delivery of the executed Assignment to Buyer and the entire purchase price to Seller shall take place at the law offices of Ling, nielsen and Robinson, 615 H Street, Rupert, Idaho, within thirty days of Buyer's receipt of approval from the Department of Water Resources.

MICROFILMED
MAR 2 5 2003

T#5435

5. The buyers shall be given posession and use of the water license and the water appurtenant thereto, upon closing.

6. In the event the buyers are unable to close this transaction for any reason, the Buyers agree that they will execute any documents necessary to transfer the water license back to the sellers.

7. In the event of any suit or proceeding by either party against the other party, in any way arising out of this agreement, the prevailing party shall be awarded their reasonable attorney fees and costs.

8. Each party agrees to pay one-half of any costs incurred in closing this agreement.

9. This agreement shall be binding upon and shall inure to the benefit of the heirs, personal representatives, administrators, successors and assigns of the parties hereto.

OTHER PROVISIONS

LEGAL DESCRIPTIONS, BUYER T.5S R.13E Section 30 SW/4 SE/4

LEGAL DESCRIPTIONS, SELLER

MICROFILMED
JUL 26 2000

OTHER PROVISIONS

Earnest money of $750.00 will be due upon signing of this document. Earnest money will be returned if transfer is not approved.

IN WITNESS WHEREOF the parties have caused their names to be subscribed on the dates set forth above.

SELLERS

BUYERS

MICROFILMED

JUL 26 2000

MEMORANDUM

To: Debbie

From: Glen

RE: **PRELIMINARY ORDER - T 5435 - WYBENGA**

Date: May 24, 2000

Please send the attached Preliminary Order together with the explanatory information. Note that we need to use the modified explanatory informattion since a hearing was not held. Hence, in this case, you do not need to serve the order on any party except Wybenga.

I have dated the order for Thursday, May 25, so there won't be a rush to get it out. Be sure and send a copy of the order to Allen Merritt.

MICROFILMED

JUL 26 2000

RECEIVED
DEC 2 9 1999
Department of Water Resources

Patrick D. Brown, P. C.
Law Offices
109 South Adams Street
Jerome, Idaho 83338

Re: Notice of Violation and Order to Show Cause (Wybenga Dairy)

Dear Mr. Brown:

The Department has reviewed the draft "Agreement and Consent Order" that you prepared following the September 24, 1999, compliance conference. Some revisions are needed to reflect the current status of filings before the department, to associate the civil penalty with the unauthorized use of water that continues to occur until a water right adequate to cover the entire dairy operation is in place, and to provide a remedy if the pending application for transfer cannot be approved.

1. Civil Penalties. Paragraph 5 of the draft "Agreement and Order" provides for the following:

a. A penalty of $50.00 per day for each day the water is diverted without adequate water rights.

b. The total penalty shall not exceed $2500, unless Wybenga fails to get a transfer approved covering the use.

c. The penalty will be paid when final action is taken by IDWR on any applications for transfer filed prior to seven days after the agreement is signed.

The Notice of Violation requires a civil penalty of $50.00 per day for each day of unauthorized use after service of the Notice of Violation. The return receipt indicates that the notice was received by Wybenga on August 24, 1999. The civil penalty should apply to each day from August 24 until a water right is in place authorizing the proposed use. It can be argued that Wybenga should not be penalized for processing delays caused by the department or third parties. An application for transfer can be processed in about 60 days if the application is not protested and the department has the information needed to complete an adequate review. A penalty assessment should be structured to avoid any implication that the penalty influenced either the timing of processing the application or the decision ultimately entered. With these thoughts in mind, I suggest the following structure for the civil penalty:

a. Payment at the time of execution of this agreement a penalty of $50.00 per day for the period from receipt of the Notice of Violation to the date the pending application for transfer was filed (October 26, 1999). 63 days time $50.00 per day = $3150.00.

b. Imposition of a civil penalty of $50.00 per day for the normal processing period (60 days) and for the length of any delay in the processing that the director

MICROFILMED
JUL 2 6 2000

determines to have been caused by failure of Wybenga to provide information needed to process the application or to otherwise delay approval. Delays not attributable to Wybenga would not involve a civil penalty. Payment of these civil penalties would be due at the time the director enters a final order.

c. If the application for transfer does not receive approval, the Department will not be prevented by terms of the agreement from thereafter seeking an injunction from the district court to stop the unauthorized use of water (Paragraph 9 of the agreement would need to be revised by adding except as otherwise provided herein).

2. Application for transfer No. 5435 has been conditionally withdrawn and application for transfer No. 5580 has been filed. The agreement should be revised to clarify the present status of these filings.

3. Paragraph 6 of the agreement provides for Wybenga to have a well interference study prepared and submitted to IDWR. This study should be broadened to include an assessment of the effect on inflows to surface sources, including the discharge of springs within the area of impact.

4. Miscellaneous:

a. Typographical errors. "conformance" in the title and "devices" in Paragraph 1 of "FACTS."

b. Paragraph 3 of the "Agreement and Order" provides for this agreement to be a consideration in processing the transfer. This provision could be considered to limit the opportunity of protestant's to participate in a contested case involving the application and should be omitted.

c. Paragraph 5 of the "Agreement and Order" includes a reference to Section 42-352, Idaho Code. This section has been repealed and replaced with Section 42-1701B, Idaho Code.

d. Paragraph 8 of the "Agreement and Order" provides for "As soon as possible..." after certain events the Wybenga's shall submit a mitigation plan. A firm time period, with the possibility for an extension if justified, should be indicated. I suggest a 60-day period.

Thank you for preparing the initial draft. When these ideas are included, the agreement can be executed. If you need clarification of these ideas, please give me a call. Given the interest in this matter, please give this your immediate attention.

Sincerely,
Norman C. Young

c. Allen Merritt, IDWR Southern Region

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JUL 2 6 2000

PATRICK D. BROWN, P.C.
LAW OFFICES

October 26, 1999

VIA FACSIMILE
(208) 327-7866

Norm Young
Idaho Department of Water Resources
P.O. Box 83720
Boise, ID 83720-0098

Post-it® Fax Note 7671	Date	# of pages ▶ 5
To Allen Merritt	From Norm Young	
Co./Dept.	Co. IDWR	
Phone #	Phone #	
Fax #	Fax #	

RE: Notice of Violation and Order to Show Cause at Wybenga Dairy

Dear Mr. Young:

Thank you for your patience in awaiting the proposed Agreement and Consent Order. As you are probably aware, Mr. Wybenga has spent considerable time over the past several weeks attempting to obtain water more suitable to purchase and transfer than the water proposed in his March 9, 1999 application.

In addition to the proposed consent order, you will find enclosed a copy of the Application for Transfer Mr. Wybenga filed today at the Southern Regional Office. Mr. Wybenga has attempted to address all transfer criteria. We hope the Department will be in a position to approve the transfer after giving all parties who may file protests full opportunity to bring forth the facts, positive and negative.

The consent order was drafted, as you instructed during the compliance conference, with careful consideration for IDWR's statutory obligations under the law. I hope you will find that it strikes a balance between Mr. Wybenga's immediate needs, his efforts to remedy any unauthorized use, and the Department's obligation to enforce Title 42 of the Idaho Code.

If you would like to discuss the agreement, please don't hesitate to call me. I look forward to hearing from you.

Sincerely,

Patrick D. Brown
Attorney at Law

pdb/tf
enc.

109 SOUTH ADAMS STREET • JEROME, IDAHO • 83338
PHONE: 208-644-1967 • FAX: 208-644-1970

RECEIVED
NOV 26 2000

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF THE DIVERSION OF WATER WITHOUT A VALID RIGHT OR NOT IN CONFORMNCE WITH A VALID WATER RIGHT ON LANDS OWNED OR CONTROLLED BY STEVE &/ DARLA WYBENGA	))))))	AGREEMENT AND CONSENT ORDER

The Director of the Idaho Department of Water Resources (Department), being charged with the duty of enforcing certain statutes of the State of Idaho and the Rules of the Department, and being authorized to order the cessation of violations or attempted violations of provisions of law relating to the appropriation and distribution of water, hereby enters into this Agreement and Consent Order with Steve Wybenga and Darla Wybenga (Wybenga).

Now Therefore, before taking any testimony herein, without hearing a contested administrative adjudication of any issue of fact or law, and with the consent of the parties to this matter, it is hereby stipulated as follows:

FACTS

1. On August 19, 1999 the Department issued a Notice of Violation/Order to Show Cause pursuant to the provisions of the §42-351, Idaho Code. It orders Wybenga to show cause why diversion in excess of 13,000 gallons per day at the Wybenga Dairy should not be immediately curtailed, why measuring devises should not be installed, and why Wybenga should not be subjected to a civil penalty in the amount of $50.00 per day for each day, after the Notice of Violation

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was served, that water use at the dairy exceeds that authorized. The order further provides that Wybenga was entitled to a compliance conference;

2. The findings of fact and conclusions of law contained in the Notice of Violation are incorporated herein by reference;
3. Wybenga is currently experiencing a shortage of water necessary to maintain his dairy herd and operate the dairy due to a lack of authorized water for which to provide for the immediate needs of the dairy;
4. Wybenga has acted to remedy any unauthorized uses of water including by filing Application for Transfer No. 5435, on March 8, 1999. Several parties protested the transfer. The status of the transfer remains unresolved; and
5. Wybenga desires to remedy any violations of Idaho water law alleged in the Notice of Violation/Order to Show Cause through compliance with terms and conditions of this Agreement and Consent Order which is being entered into in accordance with provisions of §42-351, Idaho Code;

Agreement and Order

Based upon the foregoing findings and pursuant to the agreement of the parties, the Department orders as follows:

1. Wybenga shall obtain through purchase, lease, or other means adequate water rights to cover all uses of water at the Wybenga dairy;
2. Upon the execution of this Agreement and Consent Order, Wybenga shall continue to prosecute Application for Transfer No. 5435 with all due diligence, and/or file any other applications for transfer of water within seven days after this agreement is executed. Wybenga shall diligently prosecute such applications

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towards final approval or disapproval by the Department with all reasonable expediency;

3. The Department, in accordance with law, shall review and act upon the Application for Transfer No. 5435 or any other applications to be filed by Wybenga with the Department, according to law and this Agreement;
4. Any applications filed pursuant to this Agreement shall provide for all water necessary to bring all uses of the water at the Wybenga Dairy into compliance with state water law;
5. In accordance with provisions of § 42-351 and 42-352, Idaho Code, and the terms of the Notice of Violation, Wybenga shall pay the Department at the time of any final action by the Department on any applications for transfer mentioned above the agreed civil penalty in the amount of $50.00 per day for each day the water is diverted without adequate water rights authorizing such diversion, provided the total penalty shall not exceed the amount of $2500, unless Wybenga fails to obtain final approval of any application for transfer from the Department, in a manner that provides adequate water rights as provided by Idaho law and this Consent Order;
6. Wybenga shall immediately provide the Department with a well interference analysis performed by a certified engineer which describes in reasonably certain terms the likely interference, draw down, or other impacts any unauthorized use of water at the Wybenga Dairy may have on wells in the immediate area of the Wybenga Dairy;

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7. Upon its review of the well interference analysis to be submitted on behalf of Wybenga, the Department shall determine whether a mitigation plan is necessary in order to alleviate any injury to other water rights. If directed to do so by the Department, Wybenga shall prepare and propose to the Department a mitigation plan which is designed to prevent injury, remedy any past injury, and remedy any potential injury reasonably likely to have been caused by any unauthorized use of water at the Wybenga Dairy;
8. As soon as possible following the execution of this Agreement and Consent Order, and the Department's review of the well interference analysis and determination of the need for a mitigation plan, Wybenga shall prepare and submit to the Department a proposed plan for mitigation that is designed to prevent and/or remedy injury to other water rights caused by any unauthorized use of water at the Wybenga Dairy;
9. This Consent Order shall be effective immediately upon signing by both parties. Compliance with the Order by Wybenga shall preclude any civil enforcement action by the Department for alleged violations and the Notice of Violation.
10. By approval of this Agreement and the Consent Order, Wybenga hereby waives any right Wybenga otherwise has to contest any provisions of this Order.
11. If Wybenga does not comply with the terms of this Consent Order, the Department may seek and obtain an appropriate order from a District Court providing for specific performance of this Order and such other and further relief as is authorized by the law of the State of Idaho.

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12. This Agreement and Consent Order may be executed by the parties in duplicate and a duplicate shall have the same effect as an original document.

Dated this ____ day of October, 1999.

Steve Wybenga

Dated this ____ day of October, 1999.

Darla Wybenga

Dated this ____ day of October, 1999.

Norman C. Young, Administrator
Idaho Department of Water Resources

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Conditional Withdrawal of Transfer No. 5435

I, Steve Wybenga, hereby conditionally withdraw transfer No. 5435 pending before the Department of Water Resources. On this day I have filed an application for transfer of another right (portion of 37-08005D) to take the place of transfer No. 5435. If the new transfer is processed and approved, transfer No. 5435 is withdrawn

Steve Wybenga

Date: 10-26-99

JUL 25 2000
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JUL 26 2000

Merritt, Allen

From: Merritt, Allen
Sent: Tuesday, August 31, 1999 3:23 PM
To: Young, Norm
Cc: Merritt, Allen
Subject: Wybenga NOV Compliance Conference

I talked with Rob Williams, attorney for Wybenga, and we agreed to Sept. 24 @ 10:00am in Southern's Conference Room. He is drafting a letter to that affect. He indicated that he may not be the attorney at the conference but somehow he is associated with Pat Brown who will attend.

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JUL 2 6 2000

FREDERICKSEN, WILLIAMS & MESERVY
ATTORNEYS AT LAW
117 South Adams Street
P. O. Box 168
Jerome, Idaho 83338-0168

EUGENE D. FREDERICKSEN
ROBERT E. WILLIAMS
JAMES C. MESERVY

TELEPHONE: (208) 324-2303
TELECOPIER: (208) 324-3135

August 31, 1999

VIA FACSIMILE TO 736-3037

Allen Merritt, PE
Southern Region Manager
1341 Fillmore Street, Suite 200
Twin Falls, Idaho 83301-3380

In re: Wybenga

Dear Allen:

This is to confirm that we have agreed for a compliance conference to be heard before Norm Young on Friday, September 24, 1999, at 10:00 a.m.. The conference will be held at the Idaho Department of Water Resources office in Twin Falls. Either Pat Brown or myself will be present with the Wybengas at that time. This compliance conference is to be held with respect to the notice of violation served on the Wybengas under date of August 19, 1999.

Very truly yours,

FREDERICKSEN, WILLIAMS & MESERVY

ROBERT E. WILLIAMS

REW/bsb
pc: Client
C:\bshDocs\Data\Wybenga\merritt.ltr.wpd

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JUL 26 2000

FREDERICKSEN, WILLIAMS & MESERVY
ATTORNEYS AT LAW
117 South Adams Street
P. O. Box 168
Jerome, Idaho 83338-0168

EUGENE D. FREDERICKSEN
ROBERT E. WILLIAMS
JAMES C. MESERVY

Telephone: (208) 324-2303
Telecopier: (208) 324-3135
E-mail: fwmattys@northrim.net

August 26, 1999

Ms. Rita Fleck
State of Idaho Department of Water Resources
P.O. Box 83720
Boise, ID 83720-0098

Via Fax to 327-7866

Re: Steve and Darla Wybenga - Notice of Violation/Order to Show Cause

Ladies and Gentlemen:

I am writing on behalf of our clients Steve and Darla Wybenga, regarding the notice of violation issued by your department on August 19, 1999.

My clients hereby request a compliance conference in accordance with Idaho Code 42-1701B(3). Would you please contact my office to arrange the date, place and time for the compliance conference. Thank you for your anticipated cooperation.

Very truly yours,

FREDERICKSEN, WILLIAMS & MESERVY

Robert E. Williams/mf

ROBERT E. WILLIAMS

REW/mf

cc: Client
C:\Marie's Files\Letters\fleck.826

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JUL 26 2000

sent to Norm 8/27/99

FREDERICKSEN, WILLIAMS & MESERVY
ATTORNEYS AT LAW
117 South Adams Street
P. O. Box 168
Jerome, Idaho 83338-0168

Eugene D. Fredericksen
Robert E. Williams III
James C. Meservy

Telephone: (208) 324-2303
Telecopier: (208) 324-3135

TELECOPIER COVER SHEET

TO Rita Heck FAX NO. 327-7866

CC: Dept of Water Resources 736-3037 Twin Falls DATE 8/26

Matter: Steve + Darla Wybenga

From: ☐ Eugene D. Fredericksen ☒ Robert E. Williams ☐ James C. Meservy

☒ original will follow by mail ★ ☐ original will not follow by mail

WE'RE TRANSMITTING 2 PAGES, INCLUDING THIS PAGE. IF YOU DON'T RECEIVE ALL PAGES, CALL (208) 324-2303 AND ASK FOR Marie. THE DOCUMENTS ACCOMPANYING THIS TELECOPY TRANSMISSION CONTAIN INFORMATION WHICH IS CONFIDENTIAL AND/OR PRIVILEGED. THE INFORMATION IS INTENDED FOR THE USE OF THE INDIVIDUAL/ENTITY NAMED ABOVE. IF YOU ARE NOT THE INTENDED RECIPIENT, BE AWARE THAT ANY DISCLOSURE, COPYING, DISTRIBUTION, OR USE OF THE CONTENTS OF THIS TELECOPIED INFORMATION IS STRICTLY PROHIBITED. IF YOU'VE RECEIVED THIS TELECOPY IN ERROR, PLEASE NOTIFY US BY TELEPHONE WITHOUT DELAY.

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JUL 26 2000

MEMO

FROM: Allen Merritt DATE: August 25, 1999

TO: Transfer File No. 5435
Water Right(s): T35-08606B & 37-11191
In the Name of: Steve &/or Darla Wybenga
TO: Glen Saxton, Norm Young

SUBJECT: Pre-hearing Conference

Today I held a conference for this protested matter. The application was protested by Kelly & La Verne Schroeder, Ronald Stroud, Lynn Elliott and Elden Thompson. All parties were present except Kelly Schroeder. Other interested individuals were present including: Lee Halper, Don Cogger, Del Kohtz and his lawyer (John Elorrieta). There was also another neighbor their that did not give his name or sign the roster.

Mr. Wybenga explained that he was just trying to get legal after he found out from Gooding County in February that he needed a water right. He indicated that he was not intending to expand beyond what he now had.

The protestant's issues were as follows:

Stroud:	Injury to his domestic water right. His well is 1 mile south of dairy.
Elliott:	Injury to her well. Potential Contamination. Her well is ¼ mile from dairy.
Schroeder:	Injury to his well. His well is 1 ½ mile away from dairy.
Thompson:	All issues (He was coached by Halper). His well ¼ mile from dairy.

Also expressed by the protestants was their objection to moving water from American Falls area into their area and affecting their water rights. Additionally they expressed their concern that Wybenga was illegal and that nothing was being done to fine them or make them abide by law. I told them that the issue of moving water from American Falls was an issue currently being looked at in the Jerome Cheese protested transfer and that the department would issue a decision on that matter which may bear directly on this situation. As for their concern that nothing was being done about the illegal use of water I shared with them that an NOV had been issued and that matter was moving forward but separate from this issue of the protests. I also told them that I understood that Wybenga was in the process of preparing another transfer application but it had not yet been filed with the department.

No agreement or settlement of the protest was found so we turned to scheduling the hearing. Since the outcome of the Jerome Cheese transfer is important the applicant wanted to wait and see what happens there. It was decided to continue the conference to a later date. We did discuss the hearing process and the need to prepare their case on all issues if it did go to hearing.

After the conference Wybenga indicated he just got the NOV in the mail yesterday and I told him

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he needed to respond and possibly request a compliance conference in writing. He indicated that he has his lawyer working on the new transfer and he has consulted with Brockway, etc.

Also after the conference Thompson gave me a hand written sheet he wanted included in the file that outlined what he wants Wybenga to prove. I believe the sheet was prepared by Halper for Thompson.

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Allen Merritt

Recieved from Thompson @ conference 8/25/99 AM

YOU WANT WYBENGA TO PROVE THAT THIS TRANSFER:

1) WILL NOT INJURE YOUR WATER RIGHTS BY DRAWDOWN OR POLLUTION
2) DOES NOT CONSTITUTE AN ENLARGEMENT IN THE USE OF THE ORIGINAL RIGHT ~~OR AN ENLARGEMENT~~
3) ~~THAT THIS TRANSFER~~ IS CONSISTENT WITH THE CONSERVATION OF WATER RESOURCES ESPECIALLY WHERE HE SHOULD PROVE HIS WASTEWATER DOESN'T RETURN TO THE AQUIFER
4) ISN'T FORFEIT
5) COMPLIES WITH THE HISTORIC USE OF THE WATER
6) IS A BENEFICIAL USE
7) ~~IT~~ WILL IN FACT PASS THE GREAT RIFT IN TOTAL VOLUME AND REACH THE SITE OF THE DAIRY
8) WILL BE USED ON A LEGAL OPERATION THAT COMPLIES WITH ALL OFFICIAL LAWS AND RULES
9) WILL NOT CREATE A NEGATIVE RECHARGE TO THE AQUIFER ~~BY STATUS~~

IF THE DEPARTMENT APPROVES THIS, THEN YOU WANT CONDITIONS

1) METERED WELL
2) GROUND WATER MONITORING
3) OTHERS YET TO BE DETERMINED

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JUL 2 6 2000

RE: Application for Transfer No. 5435
35-08606B, 37-11191
WYBENGA, Steve &/or Darla

PLACE: Multi-Purpose Rm, City Hall-Gooding, ID

DATE: Wednesday-August 25, 1999 at Noon

CONFERENCE OFFICER: Allen D. Merritt

ASSISTED BY:

ROSTER OF ATTENDANCE

NAME	ADDRESS	REPRESENTING
Ron Stroud	1790 Clover Creek Rd	Bliss Id. Ron Stroud
Ellen Thompson	1669 Clover Creek Rd.	Bliss - Self.
Lynn Elliott	1669 Clover Creek Rd	Bliss self
Don Cogger	29235 3300 E	Wendell
Lee Hafer	331 S 230 W Jerome	self
John Floriet	480 E Wilson Eden	Del Kohler
Del Kohler	1135 Valley Rd Eden	Self
Steve & Darla Wybenga	1062 Spring Cove	Wybenga's
Lorene Schroeder	1075 Spring Cove Rd	Bliss self

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JUL 26 2000

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098
Phone: (208) 327-7900 FAX: (208) 327-7866

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

August 19, 1999

Steve Wybenga or
Darla Wybenga
662 Spring Cove Rd.
Bliss, ID 83314

CERTIFIED MAIL

RE: NOTICE OF VIOLATION

Dear Steve and Darla Wybenga:

Enclosed is a Notice of Violation which the Idaho Department of Water Resources has issued pursuant to Section 42-1701B(3), Idaho Code.

Please note that Section 42-1701B(3), Idaho Code provides that you are entitled to a compliance conference concerning the alleged violation if you contact the department within fourteen (14) days and in writing request such a conference. If you do not request a compliance conference, the Director of the department (Director) is authorized to proceed with a civil enforcement action.

Section 42-1701B(3), Idaho Code provides the opportunity for you to explain the circumstances of the alleged violation and to offer a proposal to remedy the damage caused by the alleged violation and to assure future compliance. If an agreement can be reached, the Idaho Code authorizes the Director to enter into a consent agreement with you which provides for payment of a civil penalty.

Questions or a request for a compliance conference should be directed to the department's regional office in Twin Falls at the following address:

Department of Water Resources
1341 Fillmore St, Suite 200
Twin Falls, ID 83301 Phone: (208) 736-3033

Sincerely,

Rita Fleck

Rita Fleck
Administrative Assistant

c: Southern Region

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JUL 2 6 2000

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF THE DIVERSION OF WATER WITHOUT A VALID RIGHT OR NOT IN CONFORMANCE WITH A VALID WATER RIGHT ON LANDS OWNED OR CONTROLLED BY STEVE &/OR DARLA WYBENGA	**NOTICE OF VIOLATION/ ORDER TO SHOW CAUSE**

The Director of the Department of Water Resources (department), being charged with the duty of protecting water rights by enforcing specific statutes of the state of Idaho and rules promulgated by the department and being authorized to order the cessation of violations or attempted violations of the provisions of the law relating to all aspects of the appropriation and distribution of water, has caused an investigation of certain diversions of water at a dairy locally known as Wybenga Dairy, made by or under the control of Steve and/or Darla Wybenga (Wybenga).

Based upon the department's investigation, the Director sets forth the presently known facts and the applicable law as follows:

FACTS

1. On July 30, 1999, a department representative conducted a field examination and determined that water is being diverted at Wybenga Dairy in excess of the amount authorized by water right 37-11191 from well(s) located within the SW1/4SE1/4 of Section 30, Twp. 5S, Rge. 13E, B.M. The dairy is located on property at the same legal description.

2. Water right 37-11191 is limited to 13,000 gallons per day, at a maximum rate of 0.06 cubic feet per second (cfs) and the historical beneficial use of the right is estimated to be 5.9 acre feet per year.

3. The current use at the dairy is about 25,000 gallons per day, diverted at a rate of 0.11 cfs. The total annual volume diverted is about 28.0 acre feet per year.

4. Since February 1999 Wybenga has been aware of the requirement to obtain a water right to expand use at the dairy beyond that authorized by right 37-11191 On

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JUL 26 2000

March 8, 1999, Wybenga filed application for transfer 5435 proposing to move a portion of water right 35-08606 to the Wybenga Dairy to allow expansion.

5. Transfer 5435 was advertised and timely protests were filed by Kelly Schroeder, La Verne Schroeder, Ronald Stroud, Lynn Elliott and Eldon Thompson (all from Bliss, Idaho, near the site of the Wybenga Dairy).

6. The alleged unauthorized diversion and use of water by Wybenga Dairy is within a moratorium area within which the department is not approving new appropriations of water.

7. The department has received complaints regarding unauthorized use of water at the Wybenga Dairy.

APPLICABLE LAW

1. Section 42-351(1), Idaho Code, provides as follows:

> If the director of the department of water resources finds, on the basis of available information, that a person is diverting water or has diverted water from a natural watercourse or from a ground water source without having obtained a valid right to do so or is applying water or has applied water not in conformance with a valid water right, then the director of the department of water resources shall have the discretion to issue a written notice of violation to the person in accordance with the provisions of section 42-1701B, Idaho Code, for the illegal diversion or use of water. Notwithstanding the issuance of a notice of violation, the director may also file an action seeking injunctive relief directing the person to cease and desist the activity or activities alleged to be in violation of applicable law or any existing water right.

2. Section 42-201, Idaho Code, provides in pertinent part as follows:

All rights to divert and use the waters of this state for beneficial purposes shall hereafter be acquired and confirmed under the provisions of this chapter and not otherwise.

3. Section 42-229, Idaho Code, provides in pertinent part as follows:

The right to the use of ground water of this state may be acquired only by appropriation.

4. Section 42-1701B(6), Idaho Code, provides in pertinent part as follows:

> (a) Any person determined in a judicial civil enforcement action to have substantially violated any provision of title 42, Idaho Code, or any rule promulgated pursuant to that title, shall be liable for a civil penalty not to

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JUL 26 2000

exceed ten thousand ($10,000) per violation or one hundred fifty dollars ($150) per day for a continuing violation, whichever is greater; except that persons determined to be in violation of section 42-351, Idaho Code, shall be liable for a civil penalty not to exceed:

(i) For nonirrigation uses, fifty dollars ($50.00) per one-tenth (0.1) cubic feet per second or part thereof, per calendar day, up to a maximum penalty of fifty thousand dollars ($50,000) per year for water illegally used or diverted;

. . . .

5. Wybenga Dairy described in the factual findings above is diverting water in excess of that authorized under existing water rights in violation of the statutes of the state of Idaho and IDAPA Rule 37.03.08035 (Water Appropriation Rule 35).

6. Use of the public waters of the state of Idaho for uses in excess of that authorized under existing rights must be controlled to prevent injury to other water rights, to protect the water resources of the state and to assure that the allocation and use of available water supplies takes place in an orderly manner.

7. The department should issue a Notice of Violation/Order to Show Cause to Wybenga to immediately cease and desist the diversion of more than 13,000 gallons per day at the Wybenga Dairy.

8. Failure to comply with the Notice of Violation/Order to Show Cause should result in payment of a civil penalty for each day of unauthorized use of water that occurs after service of the Notice of Violation/Order of $50.00 per day.

ORDER

IT IS HEREBY ORDERED as follows:

Wybenga shall show cause why the diversion of water in excess of 13,000 gallons per day at Wybenga Dairy should not be immediately curtailed.

Wybenga shall install measuring device(s) with a totalizing meter as approved by the department on all groundwater wells serving Wybenga Dairy and report the metered water use. The first report of water use shall be submitted within thirty (30) days of receipt of this Notice of Violation. Measurement shall be recorded each week and reports shall be submitted every six (6) months thereafter, unless the department requires in writing a different reporting period.

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JUL 26 2000

Wybenga shall submit to the department a civil penalty in the amount of $50.00 per day for each day, after the Notice of Violation is served, that water use at Wybenga Dairy exceeds that authorized.

IT IS FURTHER HEREBY ORDERED as follows:

Wybenga is entitled to a **compliance conference** with department staff, if a written request is filed with the department within fourteen (14) days of receipt of this Notice of Violation.

At the conference Wybenga shall have the opportunity to explain the circumstances of the alleged violation, to present a proposal for remedying the violation and enter into a **consent agreement** with the department to comply with the laws of the state of Idaho.

DATED this 19TH day of August, 1999.

NORMAN C. YOUNG
Administrator

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JUL 26 2000

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR TRANSFER NO. 5435 STEVE &/OR DARLA WYBENGA, Applicants KELLY SCHROEDER, LA VERNE SCHROEDER, RONALD STROUD, LYNN ELLIOTT, ELDON THOMPSON, Protestants	NOTICE OF PRE-HEARING CONFERENCE SOURCE: groundwater County: Gooding

On March 8, 1999 Steve &/or Darla Wybenga (applicants), filed with the Department of Water Resources an application to transfer the public waters of the State of Idaho. The Department has received protests against the approval of said application from the above captioned protestants.

The Department has set the matter of protest for conference on **Wednesday-August 25, 1999 at Noon** in the Multi-purpose Room, Gooding City Hall, 308 Fifth Avenue West; Gooding ID.

The purpose of the conference is to formulate and simplify the issues, obtain admissions of fact and of documents which will avoid unnecessary proof, arrange for the exchange of proposed exhibits or prepared expert testimony prior to the hearing, limit the number of witnesses, consolidate the examination of witnesses, and advise the parties of the procedure which will be followed at any subsequent hearing.

The conference will be held in accordance with Chapter 2, Title 42, of the Idaho Code and the adopted Rules of Practice and Procedure of the Department of Water Resources.

The conference will be conducted in a facility which meets the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the conference, please advise the department within (10) days prior to the conference.

Dated this 3rd day of August, 1999.

Allen D. Merritt, P.E.
Regional Manager

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JUL 26 2000

CERTIFICATE OF MAILING

I hereby certify that on the 3rd day of August, 1999 a true and correct copy of the foregoing Notice of Pre-Hearing Conference was forwarded with all required charges prepared, by the method(s) indicated below, to the parties listed:

Mary Baldwin
Secretary

STEVE WYBENGA &/OR DARLA WYBENGA 662 SPRING COVE RD BLISS ID 83314	Hand delivered U.S. Mail-Regular U.S. Mail-Certified Fax	____ __x__ ____ ____
DEL KOHTZ 1135 VALLEY RD SO EDEN ID 83325	Hand delivered U.S. Mail-Regular U.S. Mail-Certified Fax	____ __x__ ____ ____
KELLY SCHROEDER 580 SPRING COVE RD BLISS ID 83314	Hand delivered U.S. Mail-Regular U.S. Mail-Certified Fax	____ __x__ ____ ____
LA VERNE SCHROEDER 1675 SPRING COVE RD BLISS ID 83314	Hand delivered U.S. Mail-Regular U.S. Mail-Certified Fax	____ __x__ ____ ____
RONALD STROUD 1790 CLOVER CREEK RD BLISS ID 83314	Hand delivered U.S. Mail-Regular U.S. Mail-Certified Fax	____ __x__ ____ ____
LYNN ELLIOTT 1669 CLOVER CREEK RD BLISS ID 83314	Hand delivered U.S. Mail-Regular U.S. Mail-Certified Fax	____ __x__ ____ ____
ELDEN A THOMPSON 1668 CLOVER CREEK RD BLISS ID 83314		

MICROFILMED

JUL 26 2000

State of Idaho
DEPARTMENT OF WATER RESOURCES
1341 Fillmore Street, Suite 200, Twin Falls, ID 83301-3380
Phone: (208) 736-3033 FAX: (208) 736-3037

SOUTHERN REGION

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

August 5, 1999

ATTENTION: Carmen
GOODING CITY HALL
308 5TH AVENUE WEST
GOODING ID 83330

Dear Carmen:

This is a follow-up to our telephone conversation yesterday to confirm the reservation of the Multi-purpose Room for a meeting to be held by this office on Wednesday-August 25, 1999 from Noon - 2:00 p.m.

If you have any questions please feel free to contact me or Allen Merritt, Southern Regional Office Manager.

Thank you very much for your assistance in this matter.

Very truly yours,

Mary Baldwin

Mary Baldwin
Administrative Assistant

MICROFILMED
JUL 26 2000

ACTION REQUIRED

FROM: Allen Merritt

TO: Norm Young

Here is a draft NOV for Wybenga Dairy as you requested. Attached is also Corey's memo and other copies of documents out of the transfer #5435 file. I have not yet scheduled a conference but intend to have one 9/9/99 @ ~~Noon somewhere in Gooding Co.~~ Gooding City Hall

as Wybenga Dairy).

Based upon the department's investigation and understanding of the law, the Director makes the following Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT

1. On July 30th, 1999 a department representative conducted a field examination and determined that Wybenga Dairy is diverting water in excess of water right 37-11191 from well(s) located within the SW1/4SE1/4 of Section 30, Twp.05S, Rge.13E, B.M. for use in the dairy at the same location.

2. Water right 37-11191 is limited to 13,000 gallons per day, a rate of 0.06 cfs and the historical beneficial use of the right is estimated to be 5.9 acre feet per annum.

3. The current use at the dairy is near 25,000 gallons per day, diverted at a rate of 0.11 cfs and the total annual volume is near 28.0 acre feet per annum.

4. Since February of 1999 Wybenga Dairy has been aware of the requirement to obtain a water right to expand use beyond what right 37-11191. On March 8th , 1999 Steve &/or Darla Wybenga filed application for transfer 5435

MEMORANDUM

TO: Allen Merritt

FROM: Corey Skinner CS

DATE: August 3, 1999

SUBJECT: Field Visit at Wybenga Dairy

On July 30th, Amanda Folsom and I visited Wybenga Dairy, located a couple miles north of Bliss, to follow up on the complaints the Department has recently received. Upon arriving at the Dairy, Amanda and I met with Steve and Darla Wybenga, the owners of Wybenga Dairy. I proceeded to explain to Mr. and Mrs. Wybenga why we were there, emphasizing that we were there to gather information. Mr. Wybenga was quite cooperative and began to show us around the dairy and shared information regarding his operation.

Mr. Wybenga said that he purchased the dairy about three years ago. According to Mr. Wybenga, at the time of purchase, the dairy consisted of a 200 milking cow operation. Mr. Wybenga said that he has proceeded to expand his herd to its current size of 625 milking cows and 175 dry cows. During our time at the property, it appeared to me that there were at least four or five hundred cows on the property, so I assumed Mr. Wybenga's herd numbers were accurate. From what I observed, the herd numbers that Mr. Wybenga quoted me were realistic. Observation of the herd at Wybenga Dairy revealed that at least a quarter of the herd appeared to be jersey cattle with the remainder of the herd consisting of holstein cattle. I asked Mr. Wybenga about his herd makeup, and he said that 200 of the milk cows are jersey cows and 50 of the dry cows are jersey cows. I asked Mr. Wybenga about the milk production of his herd, and he said that on average, the herd produces in the "high 70's per day" (pounds of milk per milk cow).

Mr. Wybenga also showed us the two wells on his property, but only one of the wells is actually used. The primary well for the property was recently drilled, and the backup well consists of the old, original, well for the property. The old, original, well is tied into the dairy water system, but it is not used. Mr. Wybenga said that the old well is only 90 feet deep. The new, primary well, serves as the source of water for the dairy and the one home on the property. Mr. Wybenga said that the well is 270 feet deep, has a standing water level of 165 feet, and has a 5 Hp pump (submersible). Examination of the well log for Drilling Permit 37-97-S-0033-000 reveals that a well was drilled for Steve Wybenga in April of 1997 to a depth of 270 feet. The static water level was reported to be 170 feet, according to the well log. The location of the new well was GPSed. A site tag (A0004827) was placed on a nearby tree, just east of the well. The old, original, well was located in a well house about 45 feet southeast of the new well.

According to the information from Mr. Wybenga and the well log, if a theoretical calculation is used to estimate the well production, an estimated diversion of 0.11 cfs (49 gpm) is obtained. This estimate is based on assuming a 70% system efficiency, and a 50 psi pressure head at the pump (per Mr. Wybenga). Mr. Wybenga said that he would estimate that his well operates about 12 hours per day. At a production rate of 49 gallons per minute, a total volume of 35,280 gallons would be diverted over a twelve hour period.

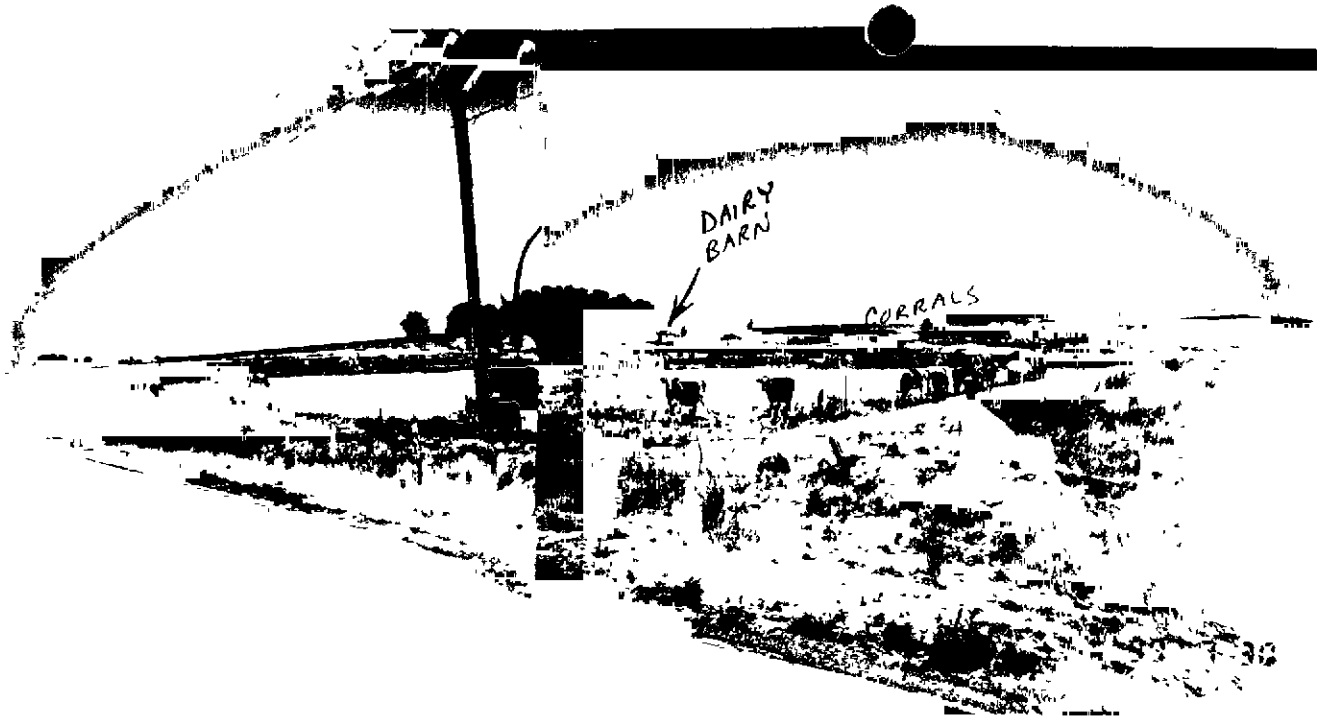
Mr. Wybenga said that canal water is used to irrigate his property, including the yard around the home. I asked if it was possible if any of his cows utilized any of the canal water for drinking water. I had observed quite a few cows in the pasture(s) surrounding the main dairy facility. Mr. Wybenga said that the well is utilized to provide the drinking water for all of the livestock. Mr. Wybenga also said that he tries to use as little water as possible in the barn, in an attempt to minimize the generation of waste water. Mr. Wybenga said that Dean Falk had estimated the daily barn use at the facility at about 428 gallons per day.

Mr. Wybenga took me through his milking barn, and showed me his water system. It was observed that two bulk tanks were present at the barn, one of which was a 4000 gallon tank, and the other was a 2,000 gallon tank. Mr. Wybenga said that he milked his cows twice a day, and that the bulk tanks were cleaned once per day. He said that the dairy barn is scraped, and then washed down, twice per day. Mr. Wybenga's milking parlor consisted of 24 stalls (twelve per side). I observed the crew prepping the cows for milking, and it was observed that no water was being used. I examined the water piping system from the well, and it appeared that there was not an adequate location where an ultrasonic meter could be utilized to measure the pipe flow before the system bifurcates into the delivery system for the barn and stockwater systems. It appeared that the system inside the barn could probably be measured, but it would probably take a couple of different measurements of different pipes to adequately measure this branch of the system. I mentioned to Mr. Wybenga, that if he were subject to measuring and reporting of his water use, he would have to modify his piping system to install a measuring device and provide room for calibration of the device.

Using the Department's standard rule of thumb for a stockwater requirement of 35 gallons per day per head for a milking cow and 12 gallons per day per head for a dry cow, the daily stockwater requirement at the dairy can be estimated. Using these figures, and the 625 head of milking cows and 175 head of dry cows, yields a daily stockwater estimate of just under 24,000 gallons per day. Examination of University of Idaho data regarding daily stockwater requirements for dairy cows reveals similar water requirements.

Examination of the water right records for the property reveals that only water right 37-11191 is associated with the property. This particular right has been recommended in the Snake River Basin Adjudication with a 1955 priority for domestic and stockwater use. The standard 13,000 gallon per day limitations were implemented as part of the recommendation. Realistically, this particular right probably refers to the old original well. In 1997, Steve Wybenga drilled another well, apparently without a water right. Therefore, this new well would have to be subject to the "domestic exemption". Based on the observations at the dairy, and the information obtained from Mr. Wybenga, it appears that there are §42-111, IDAHO CODE, issues at the facility. These issues may include the possibility of "stacking" exemptions.

During our conversation, I explained to Mr. Wybenga the possible consequences of diverting water in the State of Idaho without an adequate water right and left Mr. Wybenga with a copy of §42-1701B, IDAHO CODE. I also let Mr. Wybenga look at copies of the recent correspondence regarding the complaint(s) the Department has received regarding his dairy. Mr. Wybenga wanted to clarify that he has been trying to obtain a water right for his dairy since he found out that he needed one. He said that he was not aware of the need for a water right until he tried to obtain his CAFO permit with Gooding County. Note that the correspondence between the Department and Gooding County regarding Wybenga Dairy occurred about the same time that Mr. Wybenga began contacting the Department about obtaining a water right. Mr. Wybenga and I briefly discussed his protested transfer (#5435) and the need to get the situation resolved. We also discussed the possibility that the application may not be approved, or approved in its entirety, even if the protests are resolved. Mr. and Mrs. Wybenga mentioned that they are currently in the process of trying to obtain water rights closer to the Bliss area for their dairy. They emphasized that they are trying to obtain adequate water rights for their facility as soon as they can.

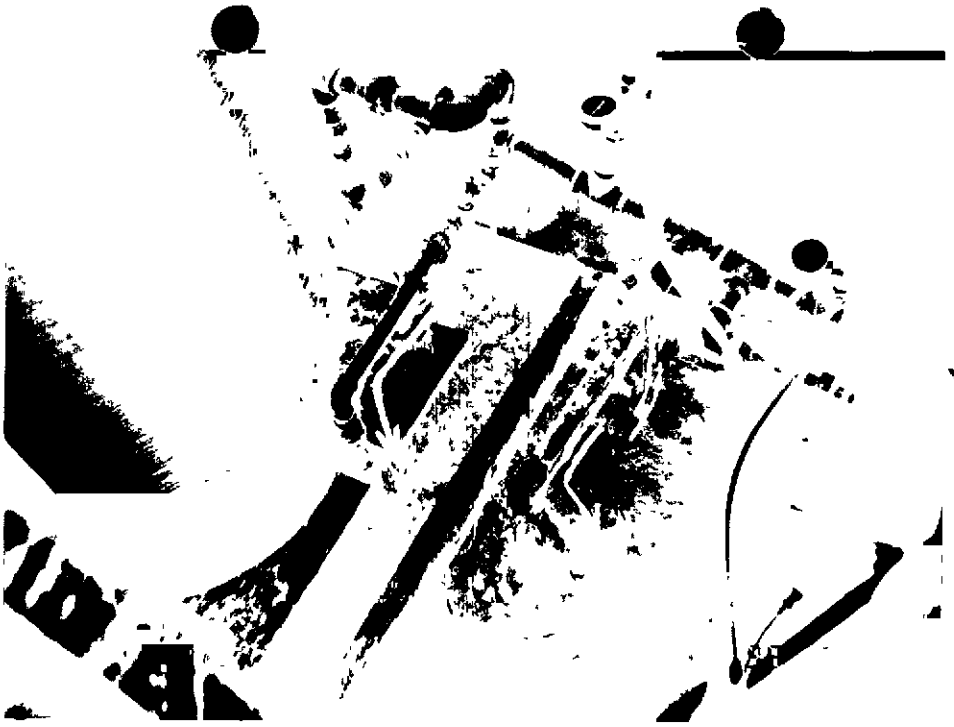


ABOVE: View of Wybenga Dairy Property from the south side of the property, looking towards the northwest. The roadway in the foreground is the south edge of Section 30 (T05S, R13E). The location of various structures are noted for reference. Note the presence of jersey cows and holstein cows in the foreground.

BELOW: View of yard and surrounding area at Wybenga Dairy looking towards the northwest. The yard, and surrounding property, is reported to be irrigated with canal water. The old, original, well is located inside the well house. The home (indicated) is served by the same well(s) as the dairy operation.



WYBENGA DAIRY PHOTOS
7/30/99
L. SKINNER

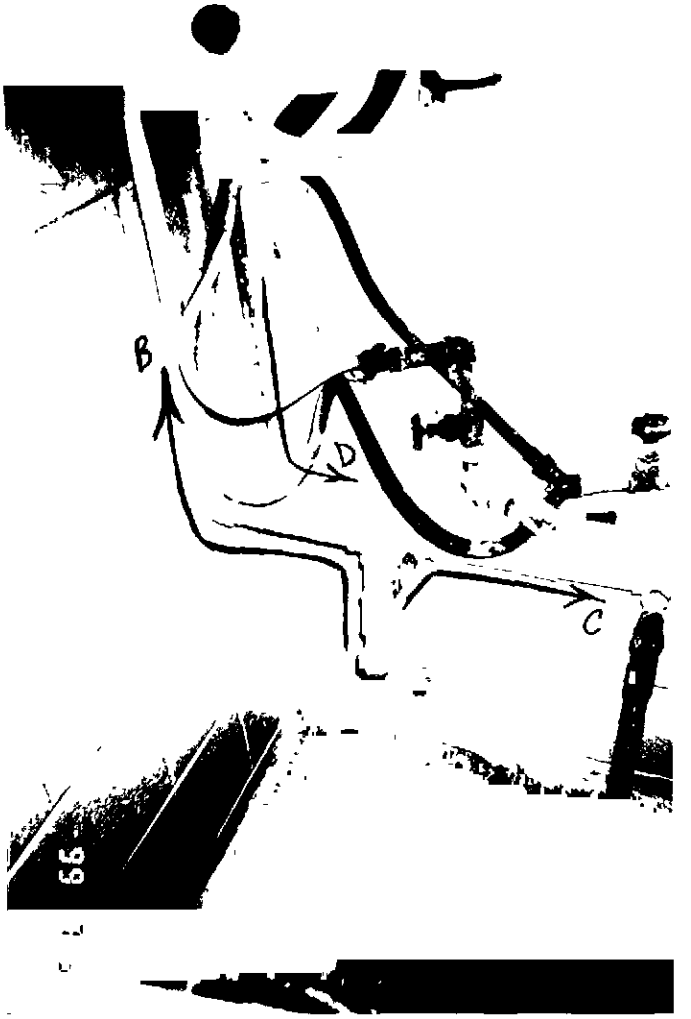


ABOVE: View inside of well house, showing the old, original well, and the piping network that supplies water to the dairy operation from the new well.

BELOW: View of new well (drilled under permit 37-97-S-0033-000) which serves as the source of water for the dairy. The GPS site tag was placed on the tree, indicated by arrow.



WYBENGA DAIRY PHOTOS
7 30 99
SKINNER



RIGHT: View of pipe from water system in well house entering the dairy barn. Pipe labeled **"A"** is pipe coming in to barn from the well(s). Pipe labeled **"B"** is pipe that carries water to the hot water heater. The pipe labeled **"C"** is a pipe that conveys cold water to the barn. Pipe labeled **"D"** is pipe that carries hot water, from water heater, back to the dairy barn for use. The pipe labeled **"A"** is about one inch in outside diameter. Mr. Wybenga said that the pipe has a ¾ inch inside diameter.



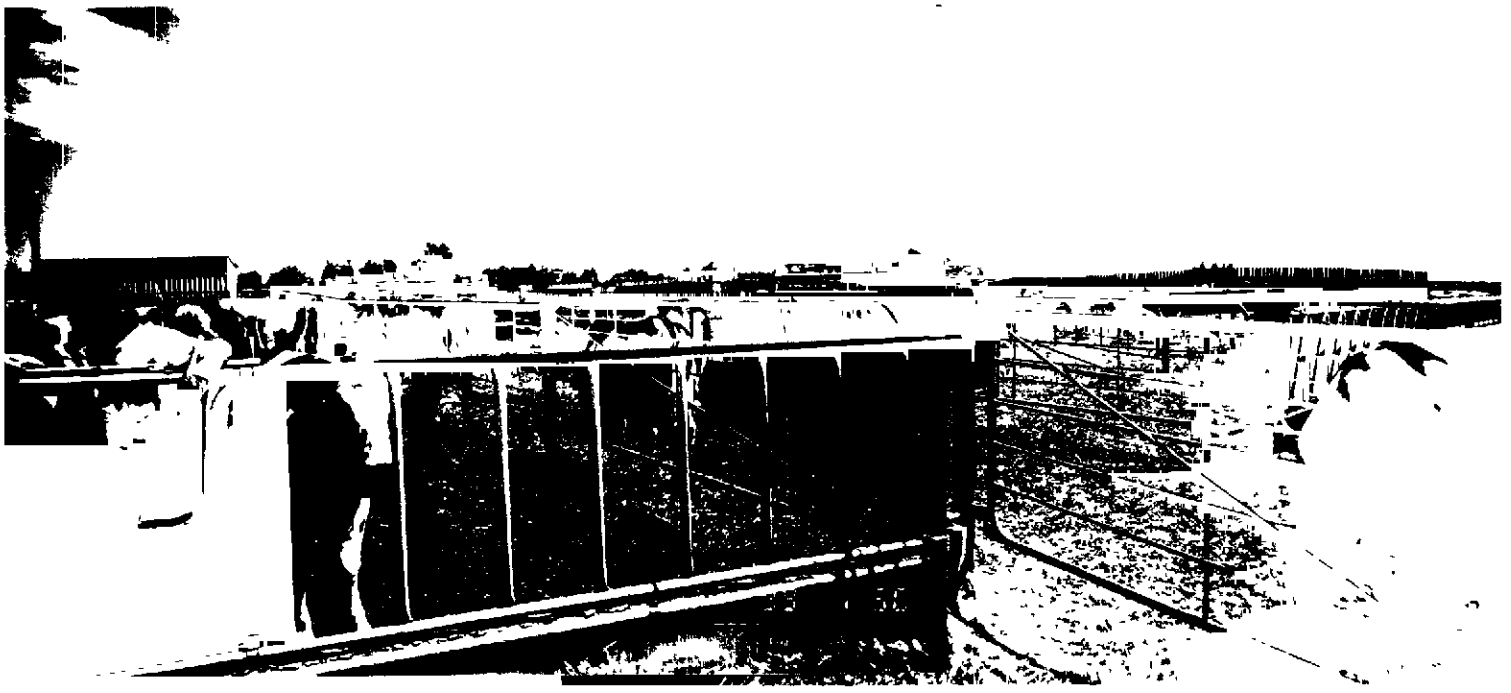
LEFT: View looking in milking parlor inside the dairy barn. It was observed that water was not used to prep the cows. However, note water hoses and nozzles hanging from the ceiling and the wet floor in the parlor. Mr. Wybenga said that the area was cleaned twice a day, primarily by scraping, and then washing with water.

WYBENGA DAIRY PHOTOS
7/31/97
J. SKINNER



ABOVE: View looking east, along the north edge of the dairy barn. Note bulk tank visible along the dairy barn. Another bulk tank was present inside the dairy barn. The corrals, north and east of the dairy barn, hold a few hundred head of cows.

BELOW: View of milk cows in the corrals north and east of the dairy barn. Mr. and Mrs. Wybenga said that they do not keep any calves at the dairy.



WYBENGA DAIRY PHOTOS
7/30/99
C. KINNER

Merritt, Allen

From: Merritt, Allen
Sent: Monday, June 28, 1999 4:02 PM
To: Young, Norm
Cc: Merritt, Allen
Subject: Draft Response to Halper inquiry about Wybenga Dairy

Attached is a draft e-mail to be sent to Halper. I didn't know if I was to send it or the director was going to write a letter If we need to investigate and send a NOV let me know

Allen



Lee Halper doc

MICROFILMED

Allen Merritt

Lee Halper
Slvrchst@magiclink.com

RECEIVED
JUL 27 1999
Department of Water Resources

Dear Mr Halper,

Our office has been asked to follow-up on your recent e-mail inquiries regarding the Wybenga Dairy As you may know the Wybenga Dairy has filed Transfer #5435 which proposes to move the point of diversion and place of use of a portion of an irrigation water right originating from the area near Aberdeen The transfer proposes to convert the irrigation right to that for use in a dairy at a site near Bliss The move is approximately 100 miles. The transfer also includes a domestic and stockwater deminimus right (37-11191) which is currently diverted at the Bliss site In total the transfer proposes to cover a dairy of at least 800 milking cows and 145 dry cows with a "cushion" if needed.

The file indicates that Mr Wybenga first visited our office in February of 1999 inquiring about the transfer process. About that same time, Judy Daubner, with Gooding Planning and Zoning, contacted our office about the Wybenga Dairy. The issue at that time appeared to be how to analyze what 37-11191 was worth in terms of dairy use

The transfer application was received in our office on March 8th, 1999 The application was advertised mid April and resulted in protests from:

Kelly Schroeder
La Verne Schroeder
Ronald Stroud
Lynn Elliott
Elden Thompson

*All from the Bliss area

No conference or hearing has yet been scheduled

Your e-mail alleges that the dairy now exists and is over appropriating water beyond that which right 37-11191 covers Our file does not confirm this to be the case ~~but it is not clear what the present use is.~~ It is ~~my understanding since there is a contested case (protested application)~~ the administration ~~will not actively~~ pursue a Notice of Violation ~~regarding the alleged over appropriation but will handle the situation through the contested case process~~

I will endeavor to schedule this matter for conference as soon as possible.

Respectfully,

Allen Merritt, PE
Southern Region Manager

IDWR will pursue resolution of this matter through the contested case proceeding now underway.

7/28/99 Karl — do not send — investigate first.

MICROFILMED
JUL 2 2001

Merritt, Allen

From: Dreher, Karl
Sent: Monday, July 26, 1999 3:50 PM
To: Merritt, Allen
Subject: FW. [Fwd: [Fwd. WYBENGA]]



[Fwd [Fwd WYBENGA]]

Allen --

Please review this forwarded e-mail and then call me to discuss

Thanks, Karl

Merritt, Allen
From: slvrchst@magiclink.com [SMTP slvrchst@magiclink.com]
Sent: Friday, July 23, 1999 8:46 PM
To: karl dreher
Cc: allen merritt
Subject: [Fwd: [Fwd WYBENGA]]

Dear Mr Dreher,
As you can see by the dates on these emails, it has been one month since I notified all parties of this water theft/misappropriation The statutes say that IDWR has enforcement powers and I assume that to mean that it is your duty to enforce the law. Since no action has been taken on this particular individual, I can only assume that this is a confirmation that no wrong has been done. Please take note that this letter is an official notice that I am claiming a new water right which I will access from the lateral on the southern border of my property. I am just taking the amount that will recharge the Aquifer anyway This right will be equal to the extra water Mr. Wybenga is appropriating (1.5 times 13,000 gallons per day) The fact that the lateral is my property is immaterial to this matter and that this water ends up at my neighbors and is his property is equally as immaterial as I now claim it as my own, which is more than what Mr Wybenga has done. When my neighbor questions me as to why he is short of water due to my pumping, I will tell him to contact you since you have sanctioned this for everyone in the State by your inactions and ignoring other such water appropriations.

Sincerely,
Lee Halper
331 S 230 W
Jerome, ID 83338



[Fwd WYBENGA]

208-324-2240

Merritt, Allen

From: slvrchst@magiclink.com [SMTP:slvrchst@magiclink com]
Sent: Wednesday, June 23, 1999 8:45 AM
To: marv patten; pat takasugi
Cc: darrel mcroberts, al lance; Dreher, Karl, laird noh; wendy jaquet-home; patty nance, niels nokkenvetd; governor dirk kempthorne; gene fadness
Subject: [Fwd: WYBENGA]

Dear Marv,
I figure between Gooding County and ISDA there should be some reasonable answer as to why this man is allowed to use water that is not his. Since the water is the property of the State (the people), would not a reasonable person consider this theft, or misappropriation of public funds and isn't it the responsibility of the public agencies to enforce the law? This man's neighbors assured me THEY know how to count past 306. Thanks for your quick reply



WYBENGA

Lee Halper

Merritt, Allen
From: slvrchst@magiclink.com [SMTP slvrchst@magiclink.com]
Sent: Wednesday, June 23, 1999 7:36 AM
To: judy daubner
Subject: WYBENGA

Dear Judy,
According to your CAFO list, this dairy has a permit for 306.50 AU's on 40 acres. According to his neighbors he has closer to 800 cows with just a domestic well and is trying to transfer water from another basin which has been tried before by such notables as Simplot who was unsuccessful. Can you explain the County's position on allowing this dairy to exceed his permit and also appropriate more water than he is legally entitled to?

Thanks, Lee

State of Idaho
DEPARTMENT OF WATER RESOURCES
1341 Fillmore Street, Suite 200, Twin Falls, ID 83301-3380
Phone: (208) 736-3033 FAX: (208) 736-3037

SOUTHERN REGION

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

July 23, 1999

KELLY SCHROEDER
580 SPRING COVE RD
BLISS ID 83314

RE: Protested Application for Transfer No. 5435 in the name of Steve &/or Darla Wybenga

Dear Protestant:

Our office has been requested to schedule a pre-hearing conference for the above referenced application you have protested. The conference will be informal and may last 1 to 2 hours. It will be held at a time between 8am to 5pm, Monday through Friday, and be held in Gooding or our Twin Falls Office.

Please provide to me by letter, fax, phone call or e-mail (amerritt@idwr.state.id.us) a list of dates/times you may be available in the month of August to attend such a conference. Please let me know by July 31.

If you have questions, please feel free to contact our office.

Sincerely,

Allen Merritt, PE
Southern Region Manager

CC: Wybenga

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DEPARTMENT OF WATER RESOURCES
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SOUTHERN REGION

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GOVERNOR

KARL J. DREHER
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July 23, 1999

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1790 CLOVER CREEK RD
BLISS ID 83314

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SOUTHERN REGION

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GOVERNOR

KARL J. DREHER
DIRECTOR

July 23, 1999

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SOUTHERN REGION

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GOVERNOR

KARL J. DREHER
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July 23, 1999

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If you have questions, please feel free to contact our office.

Sincerely,

Allen Merritt, PE
Southern Region Manager

CC: Wybenga

Merritt, Allen

From: Young, Norm
Sent: Monday, June 28, 1999 4 21 PM
To: Merritt, Allen
Subject: RE: Draft Response to Halper inquiry about Wybenga Dairy

Allen I will review your draft letter with Karl and get some guidance I will let you know whether to send. NCY

7/22/99 Del Kohtz called and asked that a conference be scheduled.

Merritt, Allen

From: Merritt, Allen
Sent: Monday, June 28, 1999 4:02 PM
To: Young, Norm
Cc: Merritt, Allen
Subject: Draft Response to Halper inquiry about Wybenga Dairy

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Allen


Lee Halper doc

Lee Halper
Slvrchst@magiclink.com

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Southern Region Manager

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Sent: Wednesday, June 23, 1999 7 36 AM
To: judy daubner
Subject: WYBENGA

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Thanks, Lee

ALLEN MERRITT. 6/23/99

Please follow-up on this & provide a response for Lee.

RECEIVED
JUN 22 1999
Department of Water Resources
Southern Region

RECEIVED
JUN 22 1999
Department of Water Resources
Southern Region

T35 - 08606 D
T 37-11191

T55, R13E, Sec 30 SW SE
T 5435

MICROFILM
JUL 26 2000

Youhg, Norm

From: slvrchst@magiclink com
Sent: Wednesday, June 23, 1999 8:45 AM
To: marv patten; pat takasugi
Cc: darrel mcroberts, al lance; karl dreher, laird noh, wendy jaquet-home; patty nance; niels nokkenvetd; governor dirk kempthorne, gene fadness
Subject: [Fwd· WYBENGA]

WYBENGA

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Lee Halper

MICROFILMED
JUL 2 6 2000

Young, Norm

From: Dreher, Karl
Sent: Wednesday, June 23, 1999 9:16 AM
To: Young, Norm
Subject: FW: [Fwd. WYBENGA]

[Fwd WYBENGA]

Please have someone from our Southern Regional Office follow-up on this.

Thanks

MICROFILMED
JUL 26 2000

State of Idaho
DEPARTMENT OF WATER RESOURCES
1341 Fillmore Street, Suite 200, Twin Falls, ID 83301-3380
Phone: (208) 736-3033 FAX: (208) 736-3037

SOUTHERN REGION

May 13, 1999

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

STEVE WYBENGA &/OR
DARLA WYBENGA
662 SPRING COVE RD
BLISS ID 83314

RE: APPLICATION FOR TRANSFER NO. 5435 (35-08606B, 37-11191)

Dear Applicants:

Enclosed are copies of protests filed against the above referenced application. In addition, there is a possibility that one or more Motions to Intervene may be filed with the Department pursuant to the Department's Rules of Procedure (IDAPA 37, TITLE 01, CHAPTER 01). You will be notified if any Motions to Intervene are received by this office.

The Department suggests you contact the protestant(s) directly to determine the exact nature of the protest(s) and, if possible, to resolve the matter without action by the Department.

Please note that your application is considered a contested case and subject to the Rules of Procedure adopted by the Department.

If you need a copy of these rules, please contact this office. The Rules of Procedure are also available on the Internet by using the IDWR Homepage at the following electronic address:

http://www.idwr.state.id.us/apa/idapa37/0101.htm

The attachment to this letter describes the issues which the Department must consider in taking action on an application. It also gives a brief description of the conference and hearing procedure followed by the Department in resolving protested applications.

If you wish to proceed with a Pre-hearing Conference &/or formal Hearing, please notify this office.

If you have any questions or if this office can be of further assistance, please feel free to contact us.

Very truly yours,

Allen D. Merritt, P.E.
Southern Region Manager

AM:MB

Enclosure(s)

cc: DEL KOHTZ
1135 VALLEY RD SO
EDEN ID 83325

MICROFILM

JUL 26 2000

CONFERENCE AND HEARING PROCEDURE

APPLICATION FOR TRANSFER ISSUES

Section 42-222, Idaho Code, identifies the following potential issues that the department can consider in connection with an application for transfer:

1. Will the proposed transfer injure other water rights?

2. Will the proposed transfer constitute an enlargement in the use of the original right?

3. Is the proposed transfer in the local public interest, where local public interest is defined as the affairs of the people in the area directly affected by the proposed use?

4. Is the proposed use contrary to conservation of water resources within the state of Idaho?

BURDEN OF PROOF

The applicant has the initial burden of proof for issues 1, 2, and 4 above and must provide evidence for the department to evaluate these criteria. The initial burden of proof on issue 3 above lies with both the applicant and protestant as to factors of which they are most knowledgeable and cognizant. The applicant has the ultimate burden of persuasion, however, for this issue.

PROCEDURE

The department generally conducts an informal conference with the parties to determine the issues and to try to settle a protested matter before a hearing is scheduled. If a hearing is held, the department will issue a written decision based on the hearing record.

CONFERENCE

The purpose of a pre-hearing conference is to provide the opportunity for the parties and the department to familiarize themselves with a contested matter and to attempt to resolve the matter. At the conference, the department may also formulate and simplify the issues, identify documents to avoid unnecessary proof, exchange proposed exhibits or prepared testimony, limit witnesses, discuss settlement or make settlement offers, schedule hearings, establish procedure at hearing and address other matters that may expedite orderly conduct and disposition of the proceeding or its settlement. The department may issue a "pre-conference statement order" which requires response to the inquiries.

HEARING

The department will tape record the hearing. Copies of a hearing tape are available upon request and the payment of the cost of reproducing the tape. The hearing likely will be conducted by a hearing officer appointed by the Director rather than by the Director himself. If so, the hearing officer will prepare a recommended order for the Director's consideration. Parties can file exceptions to a recommended order, briefs in support of the exceptions or may request oral argument. Parties may seek judicial review of any final order issued by the Director. Parties may by written stipulation waive the right to a recommended order, particularly when a shortened decision process is desirable or necessary. Such a waiver does not eliminate any rights of the parties in connection with the final order of the Director and judicial review of the order.

EXHIBITS

A party who plans to offer an exhibit as part of the hearing record must provide a copy of the proposed exhibit to the parties and to the hearing officer. As part of the conference a date may be set by which exchange of exhibits and witness lists must occur.

EFFECT OF FAILURE TO APPEAR AT A CONFERENCE OR HEARING

Failure to appear at the time and place set for a conference or hearing by the applicant or protestant(s) may allow the department to dismiss without prejudice the protest(s) or the application. Any and all cost incurred by reason of such non-appearance may be assessed against such non-appearing party.

AMERICANS WITH DISABILITIES ACT

Any hearing scheduled will be conducted in a facility which meets the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the hearing, please advise the department within (10) days prior to the hearing.

MICROFILMED

JUL 26 2000

State of Idaho
DEPARTMENT OF WATER RESOURCES
1341 Fillmore Street, Suite 200, Twin Falls, ID 83301-3380
Phone: (208) 736-3033 FAX: (208) 736-3037

SOUTHERN REGION

May 13, 1999

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

KELLY SCHROEDER
580 SPRING COVE RD
BLISS ID 83314

LA VERNE SCHROEDER
1675 SPRING COVE RD
BLISS ID 83314

RONALD STROUD
1790 CLOVER CREEK RD
BLISS ID 83314

LYNN ELLIOTT
1669 CLOVER CREEK RD
BLISS ID 83314

ELDEN A THOMPSON
1668 CLOVER CREEK RD
BLISS ID 83314

RE: APPLICATION FOR TRANSFER NO. 5435 (35-08606B, 37-11191)-Wybenga

Dear Protestant(s):

Your protest against the approval of the above referenced application has been received and a copy has been sent to the applicant with the suggestion that he contact you directly to determine the exact nature of the protest and, if possible, to resolve the matter without action by the Department.

Please note that the application is considered a contested case and subject to the Rules of Procedure adopted by the Department.

If you need a copy of these rules, please contact this office. The Rules of Procedure are also available on the Internet by using the IDWR Homepage at the following electronic address:

http://www.idwr.state.id.us/apa/idapa37/0101.htm

The attachment to this letter describes the issues which the Department must consider in taking action on an application. It also gives a brief description of the conference and hearing procedure followed by the Department in resolving protested applications.

If you have any questions or if this office can be of further assistance, please feel free to contact us.

Very truly yours,

Allen D. Merritt, P.E.
Southern Region Manager

AM:MB

Enclosure(s)

MICROFILMED
JUL 26 2000

State of Idaho
DEPARTMENT OF WATER RESOURCES
1341 Fillmore Street, Suite 200, Twin Falls, ID 83301-3380
Phone: (208) 736-3033 FAX: (208) 736-3037

SOUTHERN REGION

May 13, 1999

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

RAY MAXFIELD AND
JUDY MAXFIELD
655 SPRING COVE RD
BLISS ID 83314

Re: Application for Transfer No. 5435 (35-08606B, 37-11191) in the Name of Steve &/or Darla Wybenga

Dear Mr. & Mrs. Maxfield:

This office received your protest against the above referenced application on 05/12/99. However, this is nine (9) days after the deadline of May 3, 1999 for timely protests. Since your protest was late, I must reject it. Your protest and Check No. 1118 are being returned to you as enclosures to this letter.

Please note that a timely protests of the application have been filed by other parties. As of this date, no conference or hearing has been set.

As our 5/6/99 correspondence outlines, the Department's "Rules of Procedure" provides a means for intervention into contested cases. Our records indicate that a copy of these rules were sent to you at that time. Please see rules 350 through 354.

Please also note that when filing a **petition to intervene** it must be accompanied by the required $25.00 filing fee and that you must mail copies to all other parties to the case (See rule 301 and 302).

If you have any questions, please feel free to contact our office.

Very truly yours,

Allen D. Merritt, P.E.
Regional Manager

AM:MB
Enclosures

MICROFILMED

JUL 26 2000

3/96

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
NOTICE OF PROTEST

This form may be used to file a protest with the department under sections 42-108B, 42-203A, 42-203C, 42-211, 42-222 and 42-224, Idaho Code. The department will also accept a timely protest not completed on this form if it contains the same information.

RECEIVED
APR 27 1999
Department of Water Resources
Southern Region

1. Matter being protested Transfer No. 5435
2. Name of protestant Elden A. Thompson
3. Protestant's representative for service (If different than protestant)
   Self
4. Service mailing address 1668 Clover Creek Rd- Bliss, Id 83314
5. Service telephone no. 208-352-4209
6. Basis of protest (including statement of facts and law upon which the protest is based)
   Aquifer I in this area - is not the same as the one Serving Bridgeport County. Also we have 2 wells within ½ mile of. This new well Location.

(additional pages may be attached to describe the nature of the protest)

7. What would resolve your protest? Guarantee that the new well would'nt decrease our wells supply nor manner - or the run off won't contaminate same.

I hereby, acknowledge that if I, or my designated representative, fails to appear at any regularly scheduled conference or hearing in the matter of which I have been notified at the address above, the department may issue a notice of proposed default against me in this matter for failure to appear. I also verify that I have served a copy of this protest upon the applicant.

Signed this 27 day of April, 1999.

Elden A. Thompson
PROTESTANT

Self
PROTESTANT'S REPRESENTATIVE

MICROFILMED
JUL 26 2000

NOTE:

A protestant is required to timely file a protest with the department together with a $25.00 protest fee for each application being protested in order for the protestant to be considered a full party by the department. In addition, the department's Rule of Procedure, IDAPA 37.01.01203, requires a protestant to send a copy of a protest to the applicant.

INSTRUCTIONS

1. The matter being protested must be clearly identified. A typical matter is identified by the application number such as "Application for Permit No. _____ in the name of _____" or "Application for Transfer No. _____ in the name of _____."

2. Show the name of the protestant. Only one (1) protestant may be shown per protest form. If this protest form is signed by more than one person, the hearing officer will consider the first signer as the official protestant and the representative for service of documents.

3. If the protestant is represented by an attorney or other authorized representative, show the representative's name. The department then will serve documents on the representative and upon the protestant if specifically requested.

4. Show the address where the department is to serve the documents. This should be the address of the authorized representative unless the protestant does not designate a representative.

5. Show the telephone number of the authorized representative unless the protestant does not designate a service representative.

6. Specifically describe the nature of the protest.

7. Describe the relief being sought by the protestant.

FOR DEPARTMENT USE ONLY

Received by GLS Date 27Ap99 Time 1410 hr

$25.00 fee Receipted by GLS # S022073 Date 27Ap99

MICROFILMED

JUL 26 2000

96

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
NOTICE OF PROTEST

RECEIVED
MAY 0 3 1999
Department of Water Resources
Southern Region

his form may be used to file a protest with the department under sections 42-108B, 42-203A, 42-203C, 42-211, 42-222 and 2-224, Idaho Code. The department will also accept a timely protest not completed on this form if it contains the same formation.

. Matter being protested Transfer No. 5435

.. Name of protestant Lynn Elliott

.. Protestant's representative for service (If different than protestant)
(self)

:. Service mailing address 1669 Clover Ck Rd. Bliss, Id. 83314

. Service telephone no. 208-352-4643

3. Basis of protest (including statement of facts and law upon which the protest is based)
I feel this is a bad precedent to set by moving water from one aquafer to another. Without a complete Study to see if our aquafer has the abilty to handle more big wells, when we already have some wells in the area that are in trouble (additional pages may be attached to describe the nature of the protest)

7. What would resolve your protest? A guarantee that our well water would not be lowered or contaminated. I would like a guarantee that they would furnish our place with good water + drill us a new well is necessary.

I hereby, acknowledge that if I, or my designated representative, fails to appear at any regularly scheduled conference or hearing in the matter of which I have been notified at the address above, the department may issue a notice of proposed default against me in this matter for failure to appear. I also verify that I have served a copy of this protest upon the applicant.

Signed this 30 day of April, 19 99.

Lynn Elliott
PROTESTANT

PROTESTANT'S REPRESENTATIVE

MICROFILMED
JUL 26 2000

NOTE:

A protestant is required to timely file a protest with the department together with a $25.00 protest fee for each application being protested in order for the protestant to be considered a full party by the department. In addition, the department's Rule of Procedure, IDAPA 37.01.01203, requires a protestant to send a copy of a protest to the applicant.

INSTRUCTIONS

1. The matter being protested must be clearly identified. A typical matter is identified by the application number such as "Application for Permit No. _____ in the name of _____" or "Application for Transfer No. _____ in the name of _____."

2. Show the name of the protestant. Only one (1) protestant may be shown per protest form. If this protest form is signed by more than one person, the hearing officer will consider the first signer as the official protestant and the representative for service of documents.

3. If the protestant is represented by an attorney or other authorized representative, show the representative's name. The department then will serve documents on the representative and upon the protestant if specifically requested.

4. Show the address where the department is to serve the documents. This should be the address of the authorized representative unless the protestant does not designate a representative.

5. Show the telephone number of the authorized representative unless the protestant does not designate a service representative.

6. Specifically describe the nature of the protest.

7. Describe the relief being sought by the protestant.

FOR DEPARTMENT USE ONLY

Received by ____ Date 5/3/99 Time 1414

$25.00 fee Receipted by ____ # SO 22097 Date 5/3/99

MICROFILMED

JUL 26 2000

'96

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
NOTICE OF PROTEST

RECEIVED
MAY 03 1999
Department of Water Resources
Southern Region

This form may be used to file a protest with the department under sections 42-108B, 42-203A, 42-203C, 42-211, 42-222 and 42-224, Idaho Code. The department will also accept a timely protest not completed on this form if it contains the same information.

1. Matter being protested Transfer No 5435
2. Name of protestant Ronald Stroud
3. Protestant's representative for service (If different than protestant) Self
4. Service mailing address 1790 Clover CK Rd Bliss Id 83314
5. Service telephone no. 208-352-4246
6. Basis of protest (including statement of facts and law upon which the protest is based) I feel the Aquifer in Our Area Will not Supply the Water for the Present Water rigats and this New Water Transfer.

(additional pages may be attached to describe the nature of the protest)

7. What would resolve your protest? A Guarantee that my Well Water Would Not be lower and Would not be Contaminated

I hereby, acknowledge that if I, or my designated representative, fails to appear at any regularly scheduled conference or hearing in the matter of which I have been notified at the address above, the department may issue a notice of proposed default against me in this matter for failure to appear. I also verify that I have served a copy of this protest upon the applicant.

Signed this 29th day of April, 19 99.

Ronald Stroud
PROTESTANT

PROTESTANT'S REPRESENTATIVE

MICROFILMED
JUL 26 2000

NOTE:

A protestant is required to timely file a protest with the department together with a $25.00 protest fee for each application being protested in order for the protestant to be considered a full party by the department. In addition, the department's Rule of Procedure, IDAPA 37.01.01203, requires a protestant to send a copy of a protest to the applicant.

INSTRUCTIONS

1. The matter being protested must be clearly identified. A typical matter is identified by the application number such as "Application for Permit No. _____ in the name of _____" or "Application for Transfer No. _____ in the name of _____."

2. Show the name of the protestant. Only one (1) protestant may be shown per protest form. If this protest form is signed by more than one person, the hearing officer will consider the first signer as the official protestant and the representative for service of documents.

3. If the protestant is represented by an attorney or other authorized representative, show the representative's name. The department then will serve documents on the representative and upon the protestant if specifically requested.

4. Show the address where the department is to serve the documents. This should be the address of the authorized representative unless the protestant does not designate a representative.

5. Show the telephone number of the authorized representative unless the protestant does not designate a service representative.

6. Specifically describe the nature of the protest.

7. Describe the relief being sought by the protestant.

FOR DEPARTMENT USE ONLY

Received by ab Date 5/3/99 Time 1414

$25.00 fee Receipted by ab # S022098 Date 5/3/99

MICROFILMED
JUL 26 2000

36

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
NOTICE OF PROTEST

RECEIVED
MAY 0 3 1999
Department of Water Resources
Southern Region

his form may be used to file a protest with the department under sections 42-108B, 42-203A, 42-203C, 42-211, 42-222 ar 2-224, Idaho Code. The department will also accept a timely protest not completed on this form if it contains the sam formation.

. Matter being protested Transfer # 5435

. Name of protestant LaVerne Schroeder

. Protestant's representative for service (If different than protestant)
Self

. Service mailing address 1675 Spring Cove Rd Bliss Id. 83314

. Service telephone no. 208 - 352 - 4279

. Basis of protest (including statement of facts and law upon which the protest is based)
We are north of the main aquifer and our domestic wells are exactic as it is.

(additional pages may be attached to describe the nature of the protest)

. What would resolve your protest? That we would have no problems with our domestic wells.

I hereby, acknowledge that if I, or my designated representative, fails to appear at any regularly scheduled conference or hearing in the matter of which I have been notified at the address above, the department may issue a notice of proposed default against me in this matter for failure to appear. I also verify that I have served a copy of this protest upon the applicant.

Signed this 3 day of May, 19 99.

LaVerne Schroeder
PROTESTANT

MICROFILMED
JUL 26 2000

PROTESTANT'S REPRESENTATIVE

NOTE:

A protestant is quired to timely est with the department tog er with a $25.00 protest fee for each applic n being protest r for the protestant to be cc dered a full party by the department. In add test to the app f Procedure, IDAPA 37.01.0 03, requires a protestant to send a copy of a

RUCTIONS

1. The matter g protested mu early identified. A typical ter is identified by the application numb as "Applica Permit No. _____ in th name of _____" o "Application for Tr fer No. _____ me of _____."

2. Show the na of the protestant. e (1) protestant may be sho per protest form. If this protest form is sig b more than on , the hearing officer will co er the first signer as the official protes th representativ vice of documents.

3. If the p t presented tom or other authorized presentative, show the presentati e. departme se documents on the re esentative and upon the otestant if lly ested.

4. Show the ss the depart is t serve the documents. is should be the ac or the authori ro tant does not designate a re esentative.

5. Show the e numb of the aut ed representative unless t otestant does nc designate a ser esentative.

6. Specifically e the nature of the pro

7. Describe t being sought by the pr ant.

FOR DEPA ENT USE ONLY

Received b Dat 5/3/99 Time 13/5

$25.00 fee c by # 5022094 Date 5/3/99.

MICROFILMED

JUL 26 2000

36

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
NOTICE OF PROTEST

RECEIVED
MAY 0 3 1999
Department of Water Resources
Southern Region

his form may be used to file a protest with the department under sections 42-108B, 42-203A, 42-203C, 42-211, 42-222 ar 2-224, Idaho Code. The department will also accept a timely protest not completed on this form if it contains the sam formation.

. Matter being protested Transfer NO. 5435

. Name of protestant Kelly Schroeder

. Protestant's representative for service (If different than protestant)

SELF

. Service mailing address 580 Spring Cove Rd.

. Service telephone no. 208-352-4269

. Basis of protest (including statement of facts and law upon which the protest is based)

Possible contamination to underground water due to amount of cattle & water used on this property due to existing conditions now. Also that existing wells ~~do not~~ may drop in depth.

(additional pages may be attached to describe the nature of the protest)

. What would resolve your protest? That new well will not affect existing wells. Contamination does not occur from use of new water.

I hereby, acknowledge that if I, or my designated representative, fails to appear at any regularly scheduled conference or hearing in the matter of which I have been notified at the address above, the department may issue a notice of proposed default against me in this matter for failure to appear. I also verify that I have served a copy of this protest upon the applicant.

Signed this 3 day of May, 1999.

Kelly Schroeder
PROTESTANT

MICROFILMED
JUL 26 2000

PROTESTANT'S REPRESENTATIVE

NOTE:

A protestant is requ o timely file a protest with the department toge ner with a $25.00 protest fee for each application ; protested in order for he protestant to be cor dered a full party by the department. In addition, epartment's Rule of Procedure, IDAPA 37.01.01 03, requires a protestant to send a copy of a prot the applicant.

INS RUCTIONS

1. The matter being lested must be c arly identified. A typical n tter is identified by the application number su "Application fo Permit No. _____ in th name of _____" or "Application for Transfe _____ in the ne of _____."

2. Sho v the name o rotestant. On (1 rotestant may be sho per protest form. If this protest orm is signed re than one . the earing officer will con er the first signer as the offici protestant and epresentative vice documents.

3. If the protestant epresented b tor or other authorized presentative, show the representative's name. e department se documents on the re sentative and upon the protestant if specifically quested.

4 Show the addres here the depa is to serve the documents. should be the address of the auth d re sentative prot ant does not designate a re resentative.

5. Sho the tele one num the auth ed representative unless th protestant does no designate a service presenta .

6. Specifically des ibe the ature of the pro

7. Describe the r being sought by the pr ant.

FOR DEPA ENT USE ONLY

Received by ___ Dat 5/3/99 Time 1315

$25.00 fee Re pted by ___ # SO 22093 Date 5/3/99

MICROFILMED
JUL 26 2000

State of Idaho
DEPARTMENT OF WATER RESOURCES
1341 Fillmore Street, Suite 200, Twin Falls, ID 83301-3380
Phone: (208) 736-3033 FAX: (208) 736-3037

SOUTHERN REGION

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

May 6, 1999

Judy Maxfield
625 Spring Cove Road
Bliss, ID 83314

Dear Ms. Maxfield:

You recently inquired about protesting water right transfer application #5435, filed in the name of Steve &/or Darla Wybenga. As you recall, the deadline for submittal of protests for this particular application was 5:00 pm, May 3rd. Therefore, it is to late to file a protest for this particular application. However, since the application is a protested matter, there is a process where an individual may petition for an order from the presiding officer granting intervention to become a party in a contested matter.

I have enclosed a copy of the Department's Rules of Procedure (IDAPA 37, TITLE 01, CHAPTER 01) for your reference. I have highlighted various sections of the rules of procedure for your reference. Rules 156, 300, 301, 302, 303, 350, 351, 352, 353, 354 describe the intervention process, and outline the requirements of the petition to intervene.

Please note that the petition to intervene must be filed with the officer designated by our agency to receive filing in the case. If you file a petition to intervene, I suggest that you file it with Allen Merritt, Regional Manager, of this office. Also note that a $25.00 filing fee must accompany the petition to intervene. In addition to filing the petition with Mr. Merritt, copies of the petition to intervene must also be concurrently served to the representatives of all the parties in the contested matter. I have included a list of the parties, along with their addresses, in contested Transfer #5435 for your reference and possible use.

MICROFILMED

JUL 26 2000

If a petition to intervene is filed, then all the parties in the contested matter have seven days to file a motion opposing the petition to intervene. The petition to intervene will not be acted upon until after seven days after its filing. If a petition to intervene shows direct and substantial interest in any part of the subject matter of a proceeding, without unduly broadening the issues, the presiding officer will grant intervention, subject to reasonable conditions.

If you have any questions, feel free to contact this office at your convenience.

Sincerely,

Corey Skinner, EIT
Dam Safety Section

Enclosures

MICROFILMED
JUL 2 6 2000

FORM 22a
9/96

IDWR TRANSFER ANALYSIS SHEET

APPLICANT Wybenga, Steve TRANSFER NO. 5435

1. Right number(s) 35-08606B, 37-11191

2. Type of right ___ Decree X License ___ Statutory Claim
X SRBA Beneficial Use Claim

3. Purpose of transfer X Change P/D X Add P/D (EXISTING) X Change P/U (35-08606)
X Change N/U ___ Change Source X Split Right
X Other: CHANGE PERIOD OF USE

4. Check Existing Right: X Source X Priority X Amount X Purpose
X Period X SRBA Claim
X Description of original point(s) of diversion
X Description of original place of use
X Overlapping rights on original place of use

Comments: NO SRBA CLAIM ASSOCIATED WITH 35-08606 SINCE PROOF FILED AFTER START OF SRBA. SRBA CLAIM 37-11191 HAS BEEN RECOMMENDED TO THE SRBA COURT. NO APPARENT OVERLAPS ON ORIGINAL PLACE(S) OF USE

5. Check Proposed Right for amount of land &/or water transferred:

X Also see attached memo for more analysis information

a. X All of right 37-11191

b. X Part of right (*NOTE! Part B should be filled in only if part of right is owned by the applicant*) 35-08606

c. X Description of point(s) of diversion NOTE TWO POD's

d. X Description of place of use

e. X Map showing P/D & P/U after transfer

f. X Correct notarized signature and $100 fee

g. X Proof of ownership of right &/or land from which water is transferred TWO SALES AGREEMENTS

h. X Expansion in use of right - Comments: NONE APPARENT

i. X Existing rights from same source, on land water is being transferred to; right number(s): NONE

j. X SRBA claim(s) - Comments (*NOTE! Approved transfer amends SRBA claim; differences between existing water right and SRBA claim? any ownership or other outstanding issues? Explain*) SEE COMMENTS # 4, FIRST PAGE

k. X Comment letters ___ Yes X No
If yes ___ Water District #
___ Lienholder, others, see #2 below for name and address

INITIAL ALLOCATION REVIEW BY R. SKINNER DATE 03/10/1999
SRBA SUPERVISOR REVIEW BY _____ DATE _____
PUBLICATION REVIEW BY _____ DATE _____

1. Legal Notice electronically sent to DWR03::VAULT ___ Yes

2. COMMENT LETTERS Copy of Pg 1 to AJ ___ Yes

Watermaster recommendation requested on _____, Received on _____

Other comments letters - send to the following name(s) & address(es):

3. Transfer published correctly? ___ Yes ___ No

4. Affidavit of publication received? ___ Yes ___ No

5. Protests received? ___ Yes ___ No; Acknowledgement sent? ___ Yes

6. Copies made for Region file (see attached supplemental page)? ___ Yes

RECOMMENDED ACTION

1. ___ Approve

2. ___ Deny due to _____

3. Conditions (special conditions in Water Districts) _____

___ Also see attached memo for recommendation dated: _____

4. By _____ Date _____

RECEIVED

MAY 12 1999

Department of Water Resources
Southern Region

DEPT. OF WATER RESOURCES
1341 Fillmore Street, Suite 200
Twin Falls, Idaho 83301-3380
Phone: (208) 736-3033
Fax: (208) 736-3037

NOTICE OF PROPOSED CHANGES TO WATER RIGHTS

NOTICE IS HEREBY GIVEN that applications have been filed with the Department of Water Resources for changes to a right **PRESENTLY**, Water Right No 35-08606 (6 07 cfs) with a priority date of 07/01/1985 is diverted from groundwater within NE1/4NW1/4, S16, T04S, R31E; Bingham County for irrigation of 303 5 acres within N1/2, S16, T04S, R31E, Bingham County Transfer No 5435 filed by **STEVE &/or DARLA WYBENGA**, 662 SPRING COVE RD, BLISS, IDAHO 83314, proposes to dry up 15 acres in Bingham County The applicant wishes to use a combined 0.36 cfs for stockwater/commercial uses in an existing dairy in Gooding County Transfer No 5436 filed by **JEROME CHEESE CO.**, Attn REX MINCHEY, P O Box 485, JEROME, ID 83338 proposes to dry up 160 acres in Bingham County The applicant wishes to use 3 20 cfs in a commercial cheese factory in Jerome County Transfer No 5437 filed by **JOE AGUEDA**, 326 E 400 N JEROME, IDAHO 83338 proposes to dry up 15 acres in Bingham County The applicant wishes to use a combined 0 30 cfs for stockwater/commercial uses in an existing dairy in Jerome County Any protest against the proposed changes must be filed with the Department of Water Resources, Southern Region, 1341 Fillmore Street, Suite 200, Twin Falls, Idaho, 83301, together with a protest fee of $25 00 on or before May 3, 1999 to be considered by the Department in its decision to grant or deny any part of the proposed change **(Each transfer requires a separate protest).** The protestant must also send a copy of the protest to the applicant

KARL J. DREHER
Director

(4154)
Pub : 4/15, 22

OK
NB
5/12/99

Legals

AFFIDAVIT OF PUBLICATION

County of Bingham)
ss
State of Idaho)

I, Jacqueline Graham do solemnly swear that I am the Legal Coordinator of The Morning News, which is a daily newspaper of general circulation, published each day except Sunday at Blackfoot, Bingham County, Idaho, said newspaper having been so published at Blackfoot, aforesaid for more than one year past, that said newspaper heretofore complied with all the provisions of Chapter 154 of the Sessions Laws of Idaho of 1911, approved March 11, 1911, and duly designated, pursuant to law, a particular day of the week as the day on which legal notices required by law or by the order of any Court of competent jurisdiction within the State of Idaho shall be published to-wit of each week, that the notice attached hereto and which is a part of this affidavit and part of the proof of publication was published in said issue of said newspaper 2 consecutive Weeks the first publication having been made on the 13th day of May 1999, and the last publication having been made on the 22nd day of May 1999, that said notice was published in the regular and entire issue of every number of the paper as aforesaid during the period and time of publication, and that notice was published, in the newspaper and not in a supplement.

Jacqueline Graham

On this 22nd day of May in the year of 1999, before me a Notary Public of the State, personally appeared Jacqueline Graham, known or identified to me to be the person whose name is subscribed to the within instrument, and being by me the first duly sworn, declared that the statements therein are true, and acknowledged to me that the executed the same.

NOTARY PUBLIC STATE OF IDAHO

Notary Public for the State of Idaho
Residing at Blackfoot, Idaho
My Commission Expires
June 19, 2004
Affidavit Processing Fee $5 00

5/22/99 INVOICE No. 0001878

THE MORNING NEWS
34 N ASH ST
PO BOX 70
BLACKFOOT ID 83221-0070

RECEIVED
MAY 12 1999
Department of Water Resources
Southern Region

000005340

ID Dept of Water Resources
1341 filmore St #200
twin falls ID
83301-3380

DATE	DESCRIPTION	TC	C	QUANTITY	UNIT	RATE	TOTAL
5/22/99	LEGAL #4154	LE	L	53.00	LINE	1.3200	69.96

T# 5435
T# 5436
T# 5437

OK MB 5/12/99

MICROFILMED
JUL 26 2000

AMOUNT DUE --> 69.96

04/22/99 INVOICE No. 0001879

THE MORNING NEWS
34 N ASH ST
PO BOX 70
BLACKFOOT ID 83221-0070

000005340

ID Dept of Water
1341 Filmore St #200
Twin Falls, ID
83301-3380

RECEIVED
MAY 12 1999
Department of Water Resources
Southern Region

DATE	DESCRIPTION	TC C	QUANTITY	UNIT	RATE	TOTAL
04/22/99	LEGAL AFFIDAVIT	LE N	1.00	@	5.0000	5.00

T#5435
T#5436
T#5437

OK
MB
5/12/99

MICROFILMED
JUL 26 2000

AMOUNT DUE --> 5.00

NOTICE OF PROPOSED CHANGES TO WATER RIGHTS, T# 5435

Notice is hereby given that an application has been filed with the Department of Water Resources by **STEVE &/OR DARLA WYBENGA**, 662 SPRING COVE RD; BLISS ID 83314 for changes to the rights listed below. **PRESENTLY**, Water Right No. 35-08606 (6.07 cfs) with a priority date of 07/01/1985 is diverted from groundwater within NE1/4NW1/4, S16, T04S, R31E; Bingham County for irrigation of 303.5 acres within N1/2, S16, T04S, R31E; Bingham County. **PRESENTLY**, Water Right No. 37-11191 (0.06 cfs) with a priority date of 01/01/1955 is diverted from groundwater within SW1/4SE1/4, S30, T05S, R13E; Gooding County for stockwater (0.06 cfs) and domestic use (0.04 cfs) within SW1/4SE1/4, S30, T05S, R13E; Gooding County.

Transfer No. 5435 proposes to dry up 15 acres in Bingham County. The applicant wishes to divert and use a combined 0.36 cfs from two (2) existing wells within SW1/4SE1/4, S30, T05S, R13E; Gooding County for the following uses:

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Karl J. Dreher, Director

Published in the Gooding County Leader on 04/15 & 04/22/99.

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JUL 2 6 2000

State of Idaho
DEPARTMENT OF WATER RESOURCES
1341 Fillmore Street, Suite 200, Twin Falls, ID 83301-3380
Phone: (208) 736-3033 FAX: (208) 736-3037

SOUTHERN REGION

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

LEGALS DEPT
MAGIC VALLEY PUBLISHING CO
ATTN Gooding County Leader
PO BOX 468
JEROME ID 83338

Gentlemen:

Enclosed you will find a legal notice which we wish to have published in your newspaper. We have inserted the required publication dates.

We have attempted to submit this legal as camera ready. Please call me at your earliest convenience and prior to your staff re-typing the legal if it does not meet your specifications so I can possibly make adjustments.

If you cannot publish the notice on the proposed dates, please contact us immediately.

In order to receive payment, an affidavit of publication must be submitted to the Department along with the publication bill.

Very truly yours,

Mary Baldwin
Administrative Assistant

Enclosure

MICROFILMED
JUL 26 2000

NOTICE OF PROPOSED CHANGES TO WATER RIGHTS
T# 5435

Notice is hereby given that an application has been filed with the Department of Water Resources by **STEVE &/OR DARLA WYBENGA**, 662 SPRING COVE RD; BLISS ID 83314 for changes to the rights listed below.

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Karl J. Dreher, Director

Published in the Gooding County Leader on 04/15 & 04/22/99.

MICROFILMED
JUL 26 2000

State of Idaho
DEPARTMENT OF WATER RESOURCES
1341 Fillmore Street, Suite 200, Twin Falls, ID 83301-3380
Phone: (208) 736-3033 FAX: (208) 736-3037

SOUTHERN REGION

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

April 2, 1999

ATTN LEGALS
THE MORNING NEWS
PO BOX 70
BLACKFOOT ID 83221

Gentlemen:

Enclosed you will find a legal notice which we wish to have published once a week for two consecutive weekly issues of your newspaper.

We have inserted the required publication dates. If you cannot publish the notice on the proposed dates, please contact us immediately.

In order to receive payment, an affidavit of publication must be submitted to the Department along with the publication bill.

Sincerely,

Mary A. Baldwin
Administrative Assistant

MB

Enclosure

MICROFILMED

JUL 26 2000

NOTICE OF PROPOSED CHANGES TO WATER RIGHTS

Notice is hereby given that applications have been filed with the Department of Water Resources for changes to a right.

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Karl J. Dreher, Director

Published in The Morning News on 04/15 & 04/22/99.

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JUL 26 2000

State of Idaho
DEPARTMENT OF WATER RESOURCES
1341 Fillmore Street, Suite 200, Twin Falls, ID 83301-3380
Phone: (208) 736-3033 FAX: (208) 736-3037

SOUTHERN REGION

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

April 1, 1999

STEVE WYBENGA &/OR
DARLA WYBENGA
662 SPRING COVE RD
BLISS ID 83314

Re: Application for Transfer No. 5435 (35-08606 Pt & 37-11191)

Dear Applicant(s):

The Department of Water Resources acknowledges receipt of your Application for Transfer.

Since the applications proposes a change in County for the point of diversion, this office has scheduled advertising the applications in both The Morning News & Gooding County Leader for 04/15 and 04/22/99. A period of ten days following the second publication will be allowed for the submittal of protests with the final protest date on May 3, 1999.

If an application is protested, you will be sent a copy of the protest. The protest must be resolved before the application is approved or denied. If the protest is not resolved voluntarily, this Department will conduct a conference and/or hearing on the matter.

State Office personnel will conduct a complete review prior to final processing of the application and will notify you of the outcome of this review.

Please feel free to contact this office if you have any questions regarding this procedure.

Sincerely yours,

Corey Skinner, E.I.T.
Safety of Dams Engineer

cs:mb

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JUL 26 2000

AFFIDAVIT of PUBLICATION

T#5435 - Wybenga
TITLE OF NOTICE

PLAINTIFF ATTORNEY

DEFENDANT

PLAINTIFF

IDWR
BILL TO

State of Idaho
County of Gooding } ss.

RECEIVED
APR 27 1999
Department of Water Resources
Southern Region

Patty Nance, being first duly sworn, deposes and says that she is the printer (publisher) of the Gooding County Leader, a newspaper published every week in Gooding, County of Gooding, State of Idaho; that said newspaper has been continuously and uninterruptedly published for a period of seventy-eight consecutive weeks prior to the first publication of the annexed notice, and is a newspaper qualified to publish legal notices as provided by act of the 1919 session of the legislature of the State of Idaho, known as House Bill 145; that the annexed advertisement was published once each week for 2 consecutive issues in said newspaper proper and not in supplement; that the date of the first publication of said advertisement was on the 15th day of April, 1999 and that date of the last publication was on the 22nd day of April, 1999.

Patty Nance

On this 22nd day of April in the year of 1999, before me, a Notary Public, personally appeared Patty Nance, known or identified to me to be the person whose name subscribed to the within instrument, and being by me first duly sworn, declared that the statements therein are true, and acknowledge to me that she executed the same.

Notary Public for Idaho
Residing at Jerome, Id
My commission expires: 3/6/01

7064/25679
GOODING COUNTY LEADER
Gooding, Idaho

OK MB 5/11/99

COST OF PUBLICATION

Number of Picas per Line
Number of Lines in Notice
Number of Insertions 2X

	Lines tabular at	7¢/Pica	
761.06	Lines straight at	45.66	6¢/Pica
761.06	Subsequent lines at	38.05	5¢/Pica
	Affidavit Fee	2.25	
	TOTAL COST	85.96	

COPY OF NOTICE

NOTICE OF PROPOSED CHANGES TO WATER RIGHTS. T# 5435

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Karl J. Dreher, Director

PUB: 4/15 - 4/22 G25679

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¢/Pica
¢/Pica

NO

MICROFILMED

AFFIDAVIT of PUBLICATION

State of Idaho
County of Gooding } ss.

RECEIVED
APR 27 1999
Department of Water Resources
Southern Region

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Patty Nance

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Notary Public for Idaho
Residing at Jerome, Id

My commission expires: 3/6/01

7064/25679

GOODING COUNTY LEADER
Gooding, Idaho

OK MB 5/11/99

COST OF PUBLICATION

Number of Picas per Line _____

Number of Lines in Notice _____

Number of Insertions 2x

_____	Lines tabular at	_____	7¢/Pica
761.06	Lines straight at	45.66	6¢/Pica
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	TOTAL COST	85.96	

PUBLICATION RATES
(Idaho Code, Rev. Status 1996)

7-8 pt. per line straight. . . . . 7¢/Pica
7-8 pt. per line tabular. . . . . 6¢/Pica
7-8 pt. per line successive insertions. . . . . 5¢/Pica

No. 7064

25679

MICROFILM
JUL 26 20

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MEMORANDUM

TO: Wybenga Transfer Application File

FROM: Corey Skinner *CS*

DATE: March 10, 1999

SUBJECT: Staff Review

The enclosed transfer application, filed in the name of Steve &/or Darla Wybenga, seeks to modify two water rights for a dairy operation located a couple of miles north of Bliss. One of the water rights (35-08606) is a trustwater irrigation license currently appurtenant to property located a few miles north of Aberdeen. The other right (37-11191) is a domestic and stock beneficial use claim that is appurtenant to the site of the dairy. The transfer application should be fairly straight forward, but some additional information should probably be considered before acting on the application.

As previously mentioned, water right 35-08606 is currently appurtenant to property located north of Aberdeen. There is no associated SRBA claim for this particular right, since proof of beneficial use was filed on this right after the commencement of the SRBA. The enclosed application seeks to take a 15 acre (0.30 cfs & 45 AFA consumptive use volume) portion of 35-08606 and convert this portion to stockwater and commercial use for an existing dairy located a couple of miles north of Bliss. The Aberdeen area and the Bliss area are both located within the boundaries of the Eastern Snake River Plain Aquifer. However, the proposed change in the point of diversion, and place of use, is over 100 miles. The proposed change in location results in a down gradient move with respect to the underground aquifer.

The other right, 37-11191, associated with the enclosed transfer is a domestic and stockwater beneficial use claim. This particular claim was recently recommended by the Department in the SRBA. This right was included in the enclosed application because it is, and will be, associated with the dairy operation. In addition, this right currently lists one well, but there are actually two wells that serve as points of diversion (one serves as a backup) for this right. Including this right in the enclosed transfer will properly record the second point of diversion, and clarify any apparent overlaps. There is no recommended volume associated with right 37-11191, but the right does claim "one home" and "150 beef and dairy stock". The enclosed transfer application is based on this right having a diversion volume of seven acre feet per annum. This volume is based on a domestic volume of 1.2 AFA (home and yard) and a stockwater volume of 5.88 AFA (based on 150 milking cows). This particular right has been utilized as the only right to serve the current dairy operation which consists of 800 milking cows and 200 dry cows.

MICROFILMED

JUL 26 2000

T#5435

The enclosed transfer should be fairly straightforward. The main issues appear to be whether right 35-08606 can be transferred the proposed distance, and what historical volume is actually associated with beneficial use claim 37-11191. The enclosed dairy worksheet, based on manual cow washing, reveals a water requirement at the dairy of 36.1 AFA. Mr. Wybenga chose to base the enclosed application on a potential maximum volume of 52 AFA. This was done to allow himself some "cushion" if needed. The site of the dairy is within the boundaries of the West Measurement District. Therefore, if the application is approved, measurement and reporting will be required, so information on actual water use at the dairy should be available.

MICROFILMED
JUL 26 2000

State of Idaho
DEPARTMENT OF WATER RESOURCES
1341 Fillmore Street, Suite 200, Twin Falls, ID 83301-3380
Phone: (208) 736-3033 FAX: (208) 736-3037

SOUTHERN REGION

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

February 24, 1999

Judy Daubner
Gooding County Planning Office
PO Box 417
Gooding, ID
83330

RE: Water Rights For Steve Wybenga Dairy

Dear Ms. Daubner;

As we discussed, Sec. 42-111 of the Idaho Code allows 13,000 gallons of groundwater per day to be diverted for stockwater and domestic purposes without a water right. Adult beef cattle have an average daily requirement of 12 gallons, while dairy cattle use 35 gallons per day. Younger dry stock drink less, of course. Mr. Wybenga's Snake River Basin Adjudication claim has not yet been decreed, but will only be decreed with the claimed flow rate when the time comes. The claim shows usage for one home and 150 beef and dairy stock, and it is unclear exactly what the stock use refers to. Were there beef calves and dry heifers, or was there a small dairy on the property? Assuming that there were only feeder stock on the property, the annual volume of water used would be less than 2.0 acre feet. This is a minimal amount compared to the amount of water needed for a large dairy. Based on the 13,000 gallons-per-day limit, a large dairy is any dairy that milks over about 300 head (without rainbirds for cow washing), or 250 head (with rainbirds). These are approximate numbers, not absolute numbers specified by state law. There is no flow-rate limitation under this portion of Sec. 42-111, only the daily volume limit. It also includes any water for culinary uses and lawn watering, so a large lawn could reduce the amount of water available for the dairy.

One provision of Sec. 42-111 makes it illegal to stack exempt domestic uses to provide water for a development that is not exempt from the filing requirements. We have interpreted this to mean that once the daily usage exceeds 13,000 gallons, the entire development requires a water right. Therefore, it is illegal to operate a large dairy without a water right. Since Mr. Wybenga's

MICROFILMED
JUL 26 2000

T#5435

dairy requires a water right but does not have one, it does not appear to be proper for the county to grandfather him in under your zoning ordinances. The permit requirements for groundwater developments became effective in 1963, and I doubt if there was a large dairy on his property back then. Since the 1992 moratorium on the approval of new consumptive water permits is still in effect, the only way to obtain water for new developments is to work with existing water rights. In the case of dairies, a transfer can be filed to dry up existing farm land in order to convert the water right from irrigation to stockwater and commercial use. We have already approved many transfers of this type.

I just talked to Corey Skinner, another water agent in our office. Mr. Wybenga has talked to him a couple of times in an effort to obtain a water right for his dairy. I will be turning my information on this matter over to Corey, so please contact him in the future if you have more questions about Mr. Wybenga's situation.

Feel free to contact me if you have more questions about water rights in general. I will have our regional manager Allen Merritt contact you when he gets back from Challis later this week.

Regards,

James E. Stanton
Sr. Water Resource Agent

MICROFILMED
JUL 2 6 2000

State of Idaho
DEPARTMENT OF WATER RESOURCES
1341 Fillmore Street, Suite 200, Twin Falls, ID 83301-3380
Phone: (208) 736-3033 FAX: (208) 736-3037

SOUTHERN REGION

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

February 23, 1999

Steve Wybenga
622 E Spring Cove Rd
Bliss, ID
83314

Dear Mr. Wybenga;

It has come to our attention that you are interested in developing a large dairy, so I thought I would try to provide some useful information on this matter. The proposed dairy requires a water right; your existing domestic claim is not adequate. There are no new water permits available for consumptive uses such as irrigation or large dairies, so you will need to obtain an existing groundwater irrigation right and transfer it to commercial and stockwater uses. You can purchase irrigated land and then dry up a portion of it, or you can just purchase a portion of a water right from someone else who will agree to dry up some of their land. Canal water cannot be used for this purpose, and a supplemental well may or may be usable depending on its historic beneficial use.

The first thing to do is to determine how many acre feet of water is needed to run your dairy annually. We have a computer program that does this, and I ran it assuming two milkings a day and the use of rainbirds to wash the cows prior to milking. Twin Falls County Agent Bob Ohlensehlen has a more-detailed program that provides water and other information for dairies. Once the volume requirements are determined, this figure can be divided by three to determine the number of acres that will have to be dried up; based on the enclosed worksheet, 21.5 acres will have to be dried up.

Once you have secured a water right to transfer, you will need to file an application. I can provide a form and instructions for your use, or can assist you in filling out the form if you so desire. Once the application is filed, it is advertised and is subject to protest. Even if no protests are received, the approval process can take several months. We will not issue any drilling permits related to the dairy until the protest period has passed without any protests being received.

If you have questions or need assistance, feel free to contact me.

MICROFILMED

JUL 2 6 2000

T#5435

State of Idaho
DEPARTMENT OF WATER RESOURCES
1341 Fillmore Street, Suite 200, Twin Falls, ID 83301-3380
Phone: (208) 736-3033 FAX: (208) 736-3037

SOUTHERN REGION

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

Regards,

James E. Stanton
Sr. Water Resource Agent

MICROFILMED
JUL 26 2000

Wybenga Dairy

FILE NUMBER ---- -
REVIEWER ---- ---- CWS

DAIRIES WATER USE WORKSHEET

REQUIRED DAIRY DATA

NUMBER OF MILKING CATTLE	800
NUMBER OF NONMILKING CATTLE	200
IF LAGOON IS AEROBIC, ENTER ITS SURFACE AREA IN ACRES IF ANAEROBIC, ENTER ZERO	0.0
EVAPOTRANSPIRATION FACTOR FOR AREA (AC-FT/AC-YR)	0
ENTER 1 FOR MANUAL COW WASHING, 2 FOR AUTOMATIC, OR 3 IF SPRINKLERS ARE USED TO FLUSH HOLDING PEN AND WASH COWS	1
NUMBER OF MILKINGS PER DAY	2

CALCULATIONS

DIVERSION RATE FOR STOCKWATER (CFS)

MILKING CATTLE @35 GPD/HD	0.52
MILKING CATTLE (NUMBER OF CATTLE ROUNDED UP) *	0.52
NONMILKING CATTLE @12 GPD/HD	0.04
NONMILKING CATTLE (NUMBER OF CATTLE ROUNDED UP) *	0.04
TOTAL (BASED UPON ROUNDED NUMBERS)	0.56

DIVERSION VOLUME (AFA)

STOCKWATER

MILKING CATTLE @35 GPD/HD	31.4
MILKING CATTLE (NUMBER OF CATTLE ROUNDED UP) *	32.0
NONMILKING CATTLE @12 GPD/HD	2.7
NONMILKING CATTLE (NUMBER OF CATTLE ROUNDED UP) *	2.7
TOTAL (BASED UPON ROUNDED NUMBERS)	34.7

COMMERCIAL

WASHING OF BULK TANK AND RELATED EQUIPMENT	0.4
PARLOR FLOOR AND MILKHOUSE FLOOR	0.1
CATTLE WASHING BASED UPON METHOD OF WASHING	0.0
TOTAL	1.4
TOTAL LIVESTOCK VOLUME	36.1

CONSUMPTIVE USE VOLUME (AFA).

STOCKWATER

MILKING	4.6
NONMILKING	0.0
TOTAL	4.6
COMMERCIAL	0.0
TOTAL CONSUMPTIVE USE	4.6

* NUMBER OF CATTLE ROUNDED UP TO AGREE WITH EXISTING TABLES

THEORETICAL FLOW ESTIMATION WORKSHEET

REQUIRED PUMP INFORMATION

	PUMP 1	PUMP 2	PUMP 3
PUMP HORSEPOWER (HP)	0.00	0.00	0.00
LIFT (FT)	0	0	0
DISCHARGE PRESSURE (PSI)	0	0	0
FRICTION LOSSES (FT)	0.0	0.0	0.0

CALCULATIONS

THEORETICAL FLOW RATE (CFS) *	0.00	0.00	0.00
DIVERSION VOLUME (AFA) **	0.0	0.0	0.0

* PUMP EFFICIENCY WAS ASSUMED TO BE 70%
** DIVERSION VOLUME IS THE ABSOLUTE MAXIMUM VOLUME BASED ON THE THEORETICAL FLOW RATE ASSUMING PUMP RUNS CONTINUOUSLY EVERY DAY OF THE YEAR.

Roger Johnson
844-1558

650 22750
600
50

Acre-feet / year

6 hr

= commercial Discharge

CFS

20 gallons

35 milk
800 x

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30 2 6 2000

T # 5435

FILE NUMBER ------ example
REVIEWER ------- jes

DAIRIES: WATER USE WORKSHEET

REQUIRED DAIRY DATA

NUMBER OF MILKING CATTLE	800
NUMBER OF NONMILKING CATTLE	145
IF LAGOON IS AEROBIC, ENTER ITS SURFACE AREA IN ACRES; IF ANAEROBIC, ENTER ZERO	4.0
EVAPOTRANSPIRATION FACTOR FOR AREA (AC-FT/AC-YR)	4
ENTER 1 FOR MANUAL COW WASHING, 2 FOR AUTOMATIC, OR 3 IF SPRINKLERS ARE USED TO FLUSH HOLDING PEN AND WASH C	3
NUMBER OF MILKINGS PER DAY	2

CALCULATIONS

DIVERSION RATE FOR STOCKWATER (CFS):

MILKING CATTLE @35 GPD/HD	0.52
MILKING CATTLE (NUMBER OF CATTLE ROUNDED UP) *	0.52
NONMILKING CATTLE @12 GPD/HD	0.03
NONMILKING CATTLE (NUMBER OF CATTLE ROUNDED UP) *	0.04
TOTAL (BASED UPON ROUNDED NUMBERS)	0.56

DIVERSION VOLUME (AFA):

STOCKWATER

MILKING CATTLE @35 GPD/HD	31.4
MILKING CATTLE (NUMBER OF CATTLE ROUNDED UP) *	32.0
NONMILKING CATTLE @12 GPD/HD	1.9
NONMILKING CATTLE (NUMBER OF CATTLE ROUNDED UP) *	2.7
TOTAL (BASED UPON ROUNDED NUMBERS)	34.7

COMMERCIAL

WASHING OF BULK TANK AND RELATED EQUIPMENT	0.4
PARLOR FLOOR AND MILKHOUSE FLOOR	0.1
CATTLE WASHING BASED UPON METHOD OF WASHING	29.4
TOTAL	29.9

TOTAL DIVERSION VOLUME	64 6

CONSUMPTIVE USE VOLUME (AFA):

STOCKWATER

MILKING	4.6
NONMILKING	0.0
TOTAL	4.6

COMMERCIAL	16 0
TOTAL CONSUMPTIVE USE	20.6

* NUMBER OF CATTLE ROUNDED UP TO AGREE WITH EXISTING TABLES.

THEORETICAL FLOW ESTIMATION WORKSHEET

REQUIRED PUMP INFORMATION

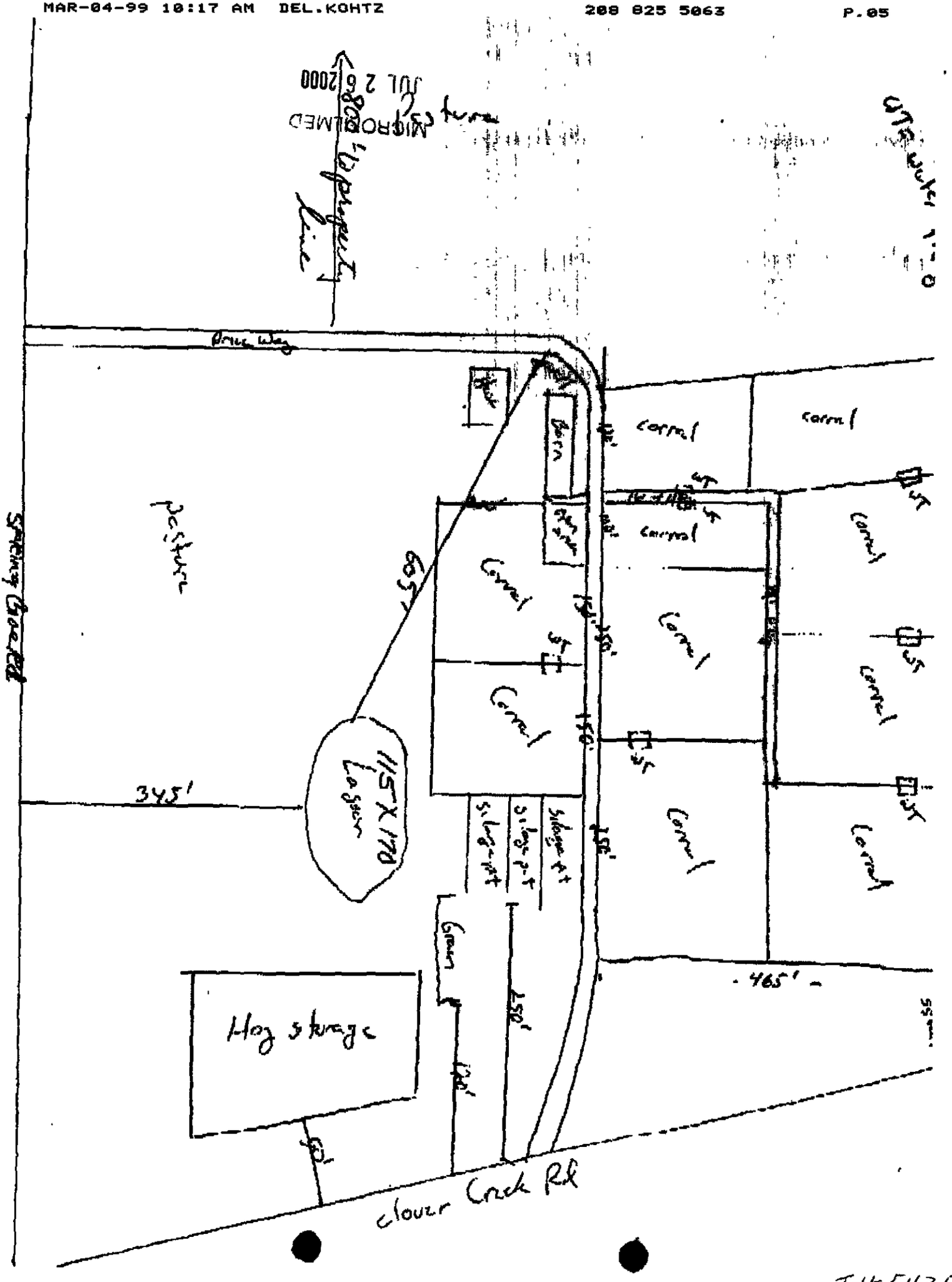
	PUMP 1	PUMP 2	PUMP 3
PUMP HORSEPOWER (HP)	7.50	0.00	0.00
LIFT (FT)	50	0	0
DISCHARGE PRESSURE (PSI)	40	0	0
FRICTION LOSSES (FT)	0.0	0.0	0 0

CALCULATIONS

THEORETICAL FLOW RATE (CFS) *	0.32	0.00	0.00
DIVERSION VOLUME (AFA) **	234.9	0.0	0 0

* PUMP EFFICIENCY WAS ASSUMED TO BE 70%.
* DIVERSION VOLUME IS THE ABSOLUTE MAXIMUM VOLUME BASED ON THE THEORETICAL FLOW RATE ASSUMING PUMP RUNS CONTINUOUSLY EVERY DAY OF THE YEAR.

T #54135


MICROFILMED
JUL 26 2000
Property line
Corn
Barn
Pasture
345'
Hog storage
Clover Creek Rd
465'

T#5435

Memorandum

From: Jeff Peppersack January 13, 2000

To: Transfer File No. 5466 ✓
Water Right Nos. 35-08606 & 45-07336

Re: Phone Call from Ardel Wickel Regarding Denial of Transfer Application

Mr. Wickel called to ask why his transfer application was denied. I referred him to the preliminary order and explained in general that even though the source of water would remain as ground water in his proposed transfer, it was determined that the movement of the point of diversion would cause injury to other water users and therefore was denied. I also explained that a preliminary order becomes a final order 14 days after the order is issued and Idaho Code provides for a means to appeal to the district court if he is in disagreement with the final order.

He also asked about utilizing old water rights that may have been forfeited instead of a transfer to the place of use. He heard that some similar claims in the SRBA were ultimately decreed as valid even though forfeiture was an issue. I explained that the SRBA would make that determination on a case by case basis. He would need to make sure the claims were properly filed and then follow the process provided in the SRBA.

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JUL 2 6 2000

T5466 - wickel

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098
Phone: (208) 327-7900 FAX: (208) 327-7866

December 28, 1999

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

ARDEL WICKEL
1084 E 300 N
DECLO ID 83323

RE: Preliminary Order for Transfer 5466

Dear Water Right Holder(s):

The accompanying order is a **"preliminary order"** issued by the department pursuant to section 67-5243, Idaho Code. It can and will become a final order without further action of the department unless a party petitions for reconsideration within fourteen (14) days after issuance as described in the enclosed information sheet.

If you have any questions regarding this matter, please call me at 208-327-7940.

Sincerely,

Jeff Peppersack, Manager
Water Right Permits Section

JP:klt

Enclosure

cc: Southern Region

MICROFILMED
JAN 26 2000

D'base updated to reflect Order 01-13-2000 CB

CERTIFICATE OF MAILING

I hereby certify that on the **28th** day of **December, 1999**, I mailed a true and correct copy, postage prepaid, of the foregoing **PRELIMINARY ORDER** to the person(s) listed below:

RE: Preliminary order for Transfer 5466

ARDEL WICKEL
1084 E 300 N
DECLO ID 83323

Kari Lynn Townsend
Secretary

MICROFILMED
JUL 26 2000

Responding to Preliminary Orders Issued by the Idaho Department of Water Resources

The Idaho Department of Water Resources (Department) issues water right permits, licenses, and transfers as preliminary orders pursuant to section 67-5243, Idaho Code. **A preliminary order can and will become a final order without further action of the department unless a party petitions for reconsideration or files an exception and/or brief as further described below:**

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a preliminary order with the Department within fourteen (14) days of the service date of the order. The Department will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See section 67-5243(3), Idaho Code.

EXCEPTIONS AND BRIEFS

Within twenty-one (21) days after (a) the service date of a preliminary order, (b) the service date of a denial of a petition for reconsideration from this preliminary order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from a preliminary order, any party may in writing support or take exceptions to any part of a preliminary order and may file briefs in support of the party's position on any issue in the proceeding. Otherwise, a preliminary order will become a final order of the Department.

If any party appeals or takes exceptions to a preliminary order, opposing parties shall have twenty-one (21) days to respond to any party's appeal. Written briefs in support of or taking exceptions to the preliminary order shall be filed with the Department. The Department retains the right to review the preliminary order on its own motion.

ORAL ARGUMENT

If the Department grants a petition to review a preliminary order, the Department shall allow all parties an opportunity to file briefs in support of or taking exceptions to the preliminary order and may schedule oral argument in the matter before issuing a final order. If oral arguments are to be heard, the Department will within a reasonable time period notify each party of the place, date and hour for the argument of the case. Unless the Department orders otherwise, all oral arguments will be heard in Boise, Idaho.

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JUL 2 6 2000

CERTIFICATE OF SERVICE

All exceptions, briefs, requests for oral argument and any other matters filed with the Department in connection with a preliminary order shall be served on all other parties to the proceedings in accordance with Rules of Procedure 302 and 303.

FINAL ORDER

The Department will issue a final order within fifty-six (56) days of receipt of the written briefs, oral argument or response to briefs, whichever is later, unless waived by the parties or for good cause shown. The Department may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. The department will serve a copy of the final order on all parties of record.

Section 67-5246(5), Idaho Code, provides as follows:

Unless a different date is stated in a final order, the order is effective fourteen (14) days after its issuance if a party has not filed a petition for reconsideration. If a party has filed a petition for reconsideration with the agency head, the final order becomes effective when:

(a) the petition for reconsideration is disposed of; or
(b) the petition is deemed denied because the agency head did not dispose of the petition within twenty-one (21) days.

APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, if this preliminary order becomes final, any party aggrieved by the final order or orders previously issued in this case may appeal the final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which:

i. A hearing was held,
ii. The final agency action was taken,
iii. The party seeking review of the order resides, or
iv. The real property or personal property that was the subject of the agency action is located.

The appeal must be filed within twenty-eight (28) days of this preliminary order becoming final. See section 67-5273, Idaho Code. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.

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JUL 26 2000

Page 1 of 7

Transfer No. 5466

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

RECEIVED
AUG 05 1999
Department of Water Resources

APPLICATION FOR TRANSFER OF WATER RIGHT

PART 1

RECEIVED
APR 21 1999
Department of Water Resources
Southern Region

Name of applicant Ardel Wickel Phone 431-2397 work

Post Office address 1084 E 300 N, Declo, ID 83323 654-2341 home

A. PURPOSE OF TRANSFER

1. ☒ Change point of diversion ☒ Add diversion point(s) ☒ Change place of use DENIED Order Dated 12-28-99
   ☐ Change nature of use ☐ Change period of use ☒ Other Create PPU

2. Describe the reason for the proposed changes I am buying the remaining portion of Lic. 35-08606 for transfer to my land near Declo, I also want to tie this into my existing water right.

DENIED 12-28-99

B. DESCRIPTION OF RIGHT(S) OR PORTION THEREOF, AFTER THE REQUESTED CHANGE

1.

Right Number	Priority	Amount (cfs/ac-ft)	Nature of Use	Period of Use
35-08606E	7-1-1985	2.27/454.0	Irrig.	4-1 to 10-31
45-07336	1-29-1978	4.38/1600.0	"	" to "
				to
		6.65		to

2. Total amount of water being transferred ~~2.27~~ cubic feet per second and/or 2054.0 acre-feet per annum.

3. Source of water Groundwater tributary to

DENIED 12-28-99

4. Point(s) of Diversion:

Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion
	SE	NW	NE	20	10S	25E	Cassia	Existing Well
	NE	SE	SE	"	"	"	"	Possible second well to be drilled

5. Lands irrigated or place of use: Permissable Place of Use of 513.5 ac/yr

Twp.	Rge.	Sec.	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	
10S	25E	20	37	40	40	38	36	23	33	35	40	40	40	40	37	40	30	20	581

DENIED Order dated 12-28-99

MICROFILMED
JUL 26 2000

Total acres 581

 Transfer No. 5466

PART 1

6. General Information

a Description of diversion system One or Two wells, connecting mainlines, Sprinklers

b. Are the lands from which you propose to transfer the water right subject to any liens, deeds of trust, mortgages, or contracts? _____ Yes ✓ No. If yes, provide a notarized statement from the holder of the lien, deed of trust, mortgage or contract agreeing to the proposed changes

c. Describe the affect on the land now irrigated if the place of use is changed pursuant to this transfer

Will be dried up & not irrigated

d. Remarks:

App. for Permit 45-07738 covers this same land, but is being held by IDWR due to the moratorium on new consumptive permits.

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Transfer of Water Rights No. _____

And said application is hereby _____, subject to the following limitations and conditions:

Witness my hand this _____ day of _____, 19____.

_____

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JUL 26 2000

Page _____ of _____ TRANS NO.

PART 2

A. DESCRIPTION OF RIGHT AS RECORDED:

Water Right No. 35-08606

STAGE: LICENSE

BENEFICIAL USE	PERIOD OF USE	DIVERSION RATE	ANNUAL VOLUME
IRRIGATION	04/01 to 10/31	6.07 CFS	1214.0 AF

SOURCE

GROUNDWATER

Priority: 07/01/1985

LOCATION OF POINT(S) OF DIVERSION: NENW , Sec. 16, Township 04S, Range 31E
BINGHAM County

PLACE OF USE: IRRIGATION

TWN	RGE	SEC		ACRES		ACRES		ACRES	TOTAL
04S	31E	16	NENE	37	NWNE	40	SWNE	40	
			SENE	36	NENW	40	NWNW	34.2	
			SWNW	36.3	SENW	40			303.5
					Total number of acres irrigated:				303.5

CONDITIONS/REMARKS:

1. This right is for the use of trust water and is subject to review 20 years after the issuance of the permit to determine availability of water and to re-evaluate the public interest.
2. Diversion and use of water under this right is subject to an annual use fee if rules are subsequently promulgated which provide for the submittal of the fee.
3. The Director retains jurisdiction of the right and may change, add, or remove any requirement as determined to be appropriate.
4. This right when combined with all other rights shall provide no more than .02 cfs per acre nor more than 4.0 afa per acre for irrigation of the lands above.

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JUL 26 2000

5466

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR TRANSFER OF WATER RIGHT

PART 2

(Attach one copy for each right)

A. DESCRIPTION OF RIGHT AS RECORDED

1. Right evidenced by:

   a. Decree No. _____ Decreed to _____

   in case of _____ vs. _____

   dated _____ in _____ county of _____

   b. License No. T35-08606E issued by the Idaho Department of Water Resources.

   c. Claim No. _____ on file with the Idaho Department of Water Resources.

   d. Transfer No. several pending which produced this right.

2. Attach a copy of last year's tax notice for the property to which the water right is appurtenant or other documents which show ownership. Label document as attachment A. Check appropriate box below:

   ☐ Tax Notice ☐ Warranty Deed ☒ Other Sale Agreement

3. Source of water Groundwater tributary to _____

4. Date or priority 7-1-1985

5. Water is used for the following purpose:

   amount 2.27 cfs (cfs/ac-ft) for Irrig. purposes from 4-1 to 10-31

   amount _____ (cfs/ac-ft) for _____ purposes from _____ to _____

   amount _____ (cfs/ac-ft) for _____ purposes from _____ to _____

6. Total amount of water under right 2.27 cubic feet per second and/or 454.0 acre-feet per annum.

7. Point(s) of Diversion:

Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion
		NE	NW	16	4S	31E	Bingham	

8. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE ¼				NW ¼				SW ¼				SE ¼				Totals.
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	
4S	31E	16	37	32.5			32.5	11.5											113.5

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JUL 26 2000

Total acres 113.5

9. Describe any other water rights used for the same purpose as described above None

PART 2

Transfer No. 5466

10. To your knowledge, has any portion of this water right undergone a period of five or more consecutive years of non-use?

No If yes, describe _____

B. DESCRIPTION OF PORTION OF RIGHT BEING TRANSFERRED

(If the entire right is to be changed by the applicant, omit part B and C.)

1. amount _____ (cfs/ac-ft) for _____ purposes from _____ to _____
   amount _____ (cfs/ac-ft) for _____ purposes from _____ to _____
   amount _____ (cfs/ac-ft) for _____ purposes from _____ to _____

2. Point(s) of Diversion:

Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion

3. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	

Total acres _____

C. DESCRIPTION OF UNCHANGED PORTION OF RIGHT *(omit if there is no change)*

1. amount _____ (cfs/ac-ft) for _____ purposes from _____ to _____
   amount _____ (cfs/ac-ft) for _____ purposes from _____ to _____
   amount _____ (cfs/ac-ft) for _____ purposes from _____ to _____

2. Point(s) of Diversion:

Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion

3. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	

MICROFILMED JUL 26 2000

TRANS NO. 5466

PART 2

A. DESCRIPTION OF RIGHT AS RECORDED:

Water Right No. 45-07336

STAGE: LICENSE

BENEFICIAL USE	PERIOD OF USE	DIVERSION RATE	ANNUAL VOLUME
IRRIGATION	03/15 to 11/15	4.38 CFS	1600.0 AF

SOURCE

GROUNDWATER

Priority: 01/24/1978

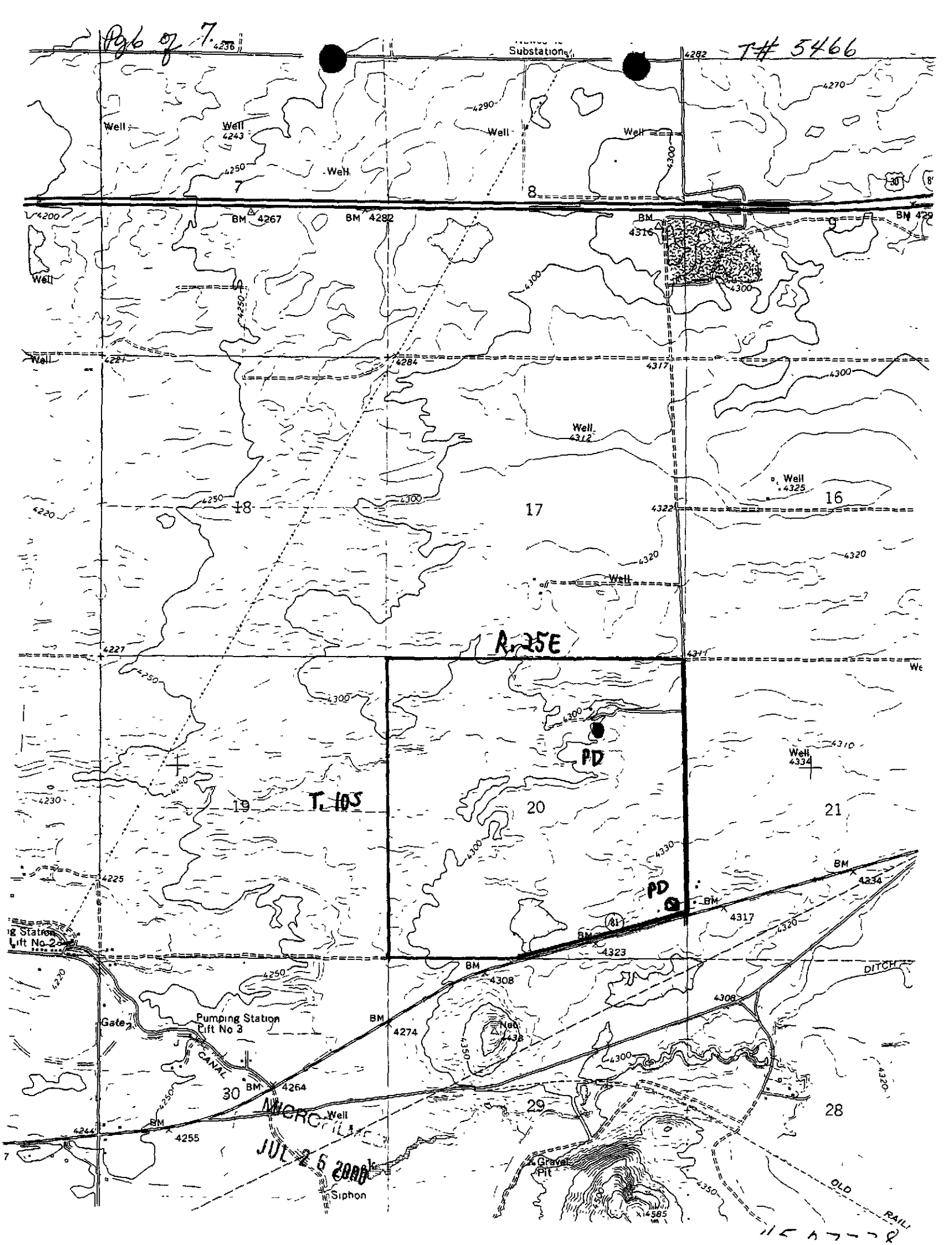
LOCATION OF POINT(S) OF DIVERSION: NWNE , Sec. 20, Township 10S, Range 25E
CASSIA County

PLACE OF USE: IRRIGATION

TWN RGE SEC		ACRES		ACRES		ACRES	TOTAL
10S 25E 20	NENE	37	NWNE	22	SWNE	19	
	SENE	38	NENW	36	NWNW	33	
	SWNW	33	SENW	35	NESW	10	
	SESW	8	NESE	39	NWSE	40	
	SWSE	30	SESE	20			400
			Total number of acres irrigated:				400

CONDITIONS/REMARKS:

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JUL 26 2000


Pg 6 of 7
T# 5466
Substations
Well
Well 4243
Well
Well
Well
7
8
BM 4267
BM 4282
BM 4316
BM 4317
Well
Well 4312
Well 4325
16
17
18
Well
R. 25E
PD
Well 4334
19
T. 10S
20
21
PD
BM 4334
BM 4317
BM 4323
BM 4308
DITCH
Gate
Pumping Station Lift No 3
BM 4274
Well 4438
J.C. CANAL
30
BM 4264
29
28
Well
BM 4255
Gravel Pit
Siphon
4585
OLD
RAIL
JUL 26 2000

Transfer No. 5466

PART 3

B. CHANGES IN NATURE OF USE

1	New Nature of Use	Amount (cfs/ac-ft)	Hours/days/year	Period of Use
	Irrigation	2.27 cfs		Apr 1 to Nov 1
				to

2 Quantity and quality of return flows and location of discharge:

3. Describe effects on other water uses resulting from the proposed change:

I hereby assert that no one will be injured by such change and that the change does not constitute an enlargement in use of the original right. The information contained in this application is true to the best of my knowledge.

I understand that any willful misrepresentations made in this application may result in voiding its approval.

Rudel Trickel
(Signature of Applicant)

Subscribed and sworn to before me this 12th day of April, 19 99.

Arvith Land
(Notary Public)

My commission expires Oct. 20, 2003

FOR DEPARTMENT USE ONLY

Transfer contains 7 pages and 1 attachments

Received by J F Stanton Date 4-21-99 Protest filed by

Prelim. check by JF Fee $100.50 22050

Receipted by JF Date 4-21-99

Published in The So. Dd. Press & The Morning News Copies of protest forwarded by

Pub. dates 6/14, 6/21/99; 6/15 + 6/22/99 Hearing held by Date

Watermaster recommendation requested on N/A Recommended for ☐ approval ☐ denial

rec'd. by

Copy of transfer sent to lien holder

MICROFILMED
JUL 26 2000

RECEIVED
APR 13 1999
Department of Water Resources
Southern Region

Declo, Idaho
March 22, 1999

To Whom It May Concern:

This is an agreement between Ardel Wickel and Roy Hincks to transfer a water right

Roy Hincks verifies he owns Idaho water license # 35-08606 and agrees to transfer 113.5 inches of this water right to Ardel Wickel. The water will be transferred to T 10S R25E Sec 20

Ardel Wickel agrees to pay Roy Hincks $400.00 per inch of water. Ardel Wickel also agrees to apply to the Idaho Department of Water Resources to make this transfer. Upon approval of this transfer Ardel Wickel will pay Roy Hincks $400.00 per inch of water. Ardel Wickel also agrees to pay Roy Hincks $2000 00 earnest money to seal this agreement. This $2000.00 will be deducted from the final settlement.

If this transfer is denied by the Water Resources Department then this agreement becomes null and void.

If this should happen Roy will refund the earnest money to Ardel Wickel because this decision is not expected.

Signed: Ardel Wickel Ardel Wickel
Date: 3-24-99

Signed: Roy Hincks Roy E Hincks
Date: 3-27-99

MICROFILMED
JUL 25 2000

T #5466

MEMORANDUM

December 15, 1999

To: Pam Skaggs\Water Allocation
From: Shane Bendixsen\Hydrology
Through: Bob Sutter
Subject: Ground Water Transfer 5466

It is my understanding transfer 5466 proposes to change the point of diversion from T04S-R31E, sec 16 to T10S-R25E, sec 20 (see attached map). The total rate of transfer is 6.65 cubic feet per second (cfs).

Presented on the same map are ground water elevations (contours) based on the USGS 1980 Regional Aquifer System Analysis (RASA). While the data were collected approximately 20 years ago, it is still considered to be the best data source for generating contours to determine regional ground water flow. No other mass measurement has collected as much data and proper sample spacing.

At the current point of diversion part of the ground water is tributary directly west to the Snake River below Milner (Thousand Springs) and part is tributary to the Snake River at American Falls Reservoir and the Snake River below American Falls and above Lake Walcott. At the proposed point of diversion ground water flow is west to northwest under the Snake River which is tributary to the Snake River below Milner (Thousand Springs). The Snake River in this reach is considered "perched" and not hydraulically connected to ground water.

Ground water trends at the current point of diversion are stable. Minor fluctuations associated with wet and dry periods are present, but no long term decreases in ground water levels have been documented. At the proposed point of diversion, only one well approximately two miles northeast of section 20, has long term data. A 25 foot decline from 1948 to 1996 is documented. Monitoring was discontinued in 1996 due to the well being deepened. Most of the decline occurred during the recent drought and it is not known how much recovery has occurred. However the area is similar to the Oakley Fan area in not being directly connected to the ESRP aquifer and therefore may lack sufficient recharge.

A transfer 0f 6.65 cfs on the ESRP is not a measurable amount when the entire flow in the Snake River and the volume of water in ESRP aquifer are taken into consideration. Therefore the exact magnitude of the transfer cannot readily be calculated. But it is possible to use a numeric ground water model to make estimates (per communication, John Lindgren, based upon ESRP ground water modeling). The University of Idaho finite difference ground water model was used and calibrated in the Upper Snake River Basin

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JUL 2 6 2000

Study (Idaho Department of Water Resources, January 1997). Based on the model from this study, it was possible to determine different zones of impact (response zones) to the Snake River reach gains. The model was steady state (i.e. 100 years of simulation) and it was assumed all ground water consumptively used on the ESRP will eventually affect flows in the Snake River. Four reaches were used: the Henrys Fork, Shelley to Neeley, Neeley to Minidoka, and Kimberly to King Hill.

At the current point of diversion, approximately 90 percent of the water consumptively used will deplete gains to the reaches of the Snake River above Milner (Water District 1). Approximately ten percent depletes flows below Milner in the Kimberly to King Hill reach (Thousand Springs). At the proposed point of diversion the effect above Milner is reduced to approximately 60 percent of the consumptive use, and the below Milner effect increases to approximately 40 percent.

The model and the regional contours are only approximate, but do suggest the same conclusion (i.e. the regional contours support the model estimates). Based on this some conclusions about the proposed transfer are as follows:

Total reach gains for the Snake River will not change, however there is a significant change in distribution of reach gains.

Gains will increase by approximately 30 percent of the consumptive use in the reaches of the Snake River above Milner.

Spring flows below Milner will decrease by approximately 30 percent of the consumptive use in the Kimberly to King Hill reach of the Snake River.

It is uncertain whether local recharge is sufficient for further development at the proposed point of diversion.

References

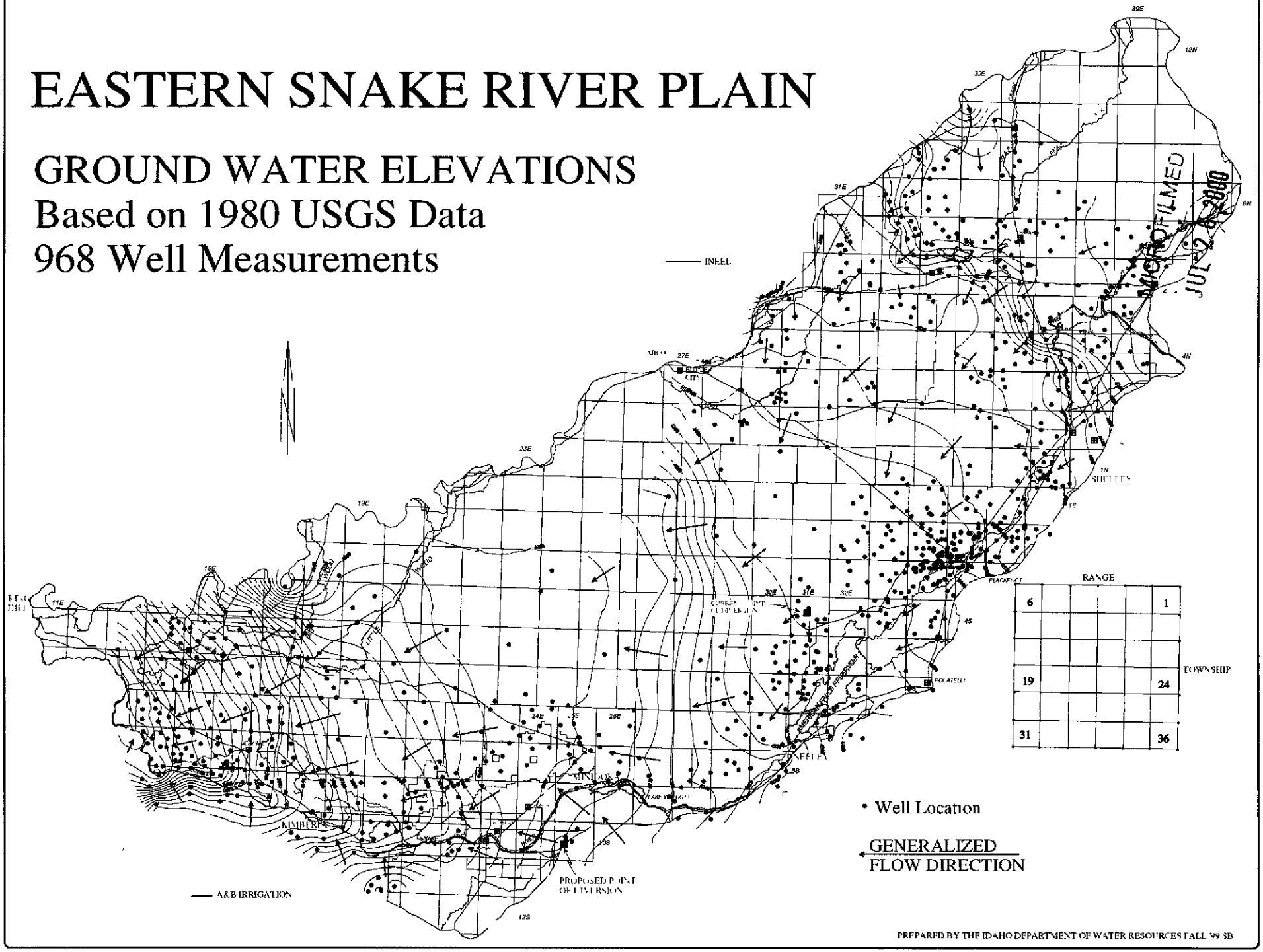
Idaho Department of Water Resources, Upper Snake River Basin Study, Boise, Idaho, January, 1997.

Cc Hal Anderson & Paul Castelin

MICROFILMED
JUL 26 2000

EASTERN SNAKE RIVER PLAIN

GROUND WATER ELEVATIONS
Based on 1980 USGS Data
968 Well Measurements



MICROFILMED JUL 2 6 2000

ATTACHMENT #1

MEMORANDUM

TO: Shane Bendixson/Hydrology

FROM: Pam Skaggs/Water Allocation

SUBJECT: Transfer 5466

DATE: November 24, 1999

Transfer 5466 proposes to change the point of diversion and place of use under a portion of groundwater Right 35-08606, moving the right southwest to Basin 45 to be used with Right 45-07336. The transfer proposes to move Right 35-08606 (Part) from NENW, S16, T04S, R31E, Bingham County to two points in the SESE & NWNE, S20, T10S, R25E, Cassia County. See attached copies and map from transfer application.

Concerns have been raised by region staff regarding transferring a right from one "response zone" to another (See attached memo from Allen Merritt), and we would like to have your input prior to making decisions about this transfer. Please review the proposed change under Transfer 5466 and advise me of your evaluation of this proposal as it relates to the relationship of groundwater between the two sites. I will withhold the application from further processing until I have received your response.

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JUL 26 2000

FORM 22a
9/96

IDWR TRANSFER ANALYSIS SHEET

APPLICANT Ardel Wickel TRANSFER NO. 5466

1. Right number(s) 35-08606E, 45-07336

2. Type of right ___ Decree √ License ___ Statutory Claim
___ SRBA Beneficial Use Claim

3. Purpose of transfer √ Change P/D √ Add P/D √ Change P/U
___ Change N/U ___ Change Source ___ Split Right
√ Other: Create PPU

4. Check Existing Right: √ Source √ Priority √ Amount √ Purpose
√ Period √ SRBA Claim
√ Description of original point(s) of diversion
√ Description of original place of use
√ Overlapping rights on original place of use

Comments: _____

5. Check Proposed Right for amount of land &/or water transferred:

___ Also see attached memo for more analysis information

a. √ All of right

b. √ Part of right (*NOTE: Part B should be filled in only if part of right is owned by the applicant*)

c. √ Description of point(s) of diversion

d. √ Description of place of use

e. √ Map showing P/D & P/U after transfer

f. √ Correct notarized signature and $100 fee

g. √ Proof of ownership of right &/or land from which water is transferred

h. √ Expansion in use of right - Comments: None requested

i. ✓ Existing rights from same source, on land water is being transferred to; right number(s): _____

Both in Transfer

j. ✓ SRBA claim(s) - Comments (*NOTE! Approved transfer amends SRBA claim; differences between existing water right and SRBA claim? any ownership or other outstanding issues? Explain*) _____

None for Basin 35 rights, Claimed as licensed for Basin 45 right

k. ✓ Comment letters ___ Yes ✓ No
If yes ___ Water District #
___ Lienholder, others, see #2 below for name and address

INITIAL ALLOCATION REVIEW BY J Estlerton DATE 4-22-99
SRBA SUPERVISOR REVIEW BY _____ DATE _____
PUBLICATION REVIEW BY _____ DATE _____

1. Legal Notice electronically sent to DWRO3::VAULT ✓ Yes @ 5:05pm (6/9/99)

2. COMMENT LETTERS Copy of Pg 1 to AJ ✓ Yes 6/9/99

Watermaster recommendation requested on _____, Received on _____

Other comments letters - send to the following name(s) & address(es):

_____

3. Transfer published correctly? ✓ Yes ___ No

4. Affidavit of publication received? ✓ Yes ___ No

5. Protests received? ___ Yes ✓ No; Acknowledgement sent? ___ Yes

6. Copies made for Region file (see attached supplemental page)? ___ Yes

RECOMMENDED ACTION

1. ___ Approve ?

2. ___ Deny due to ! Review by Administration of Hydrology.

3. Conditions (special conditions in Water Districts) _____

X Also see attached memo for recommendation dated: 8/3/99

4. By AJ~ Date 8/3/99

RECEIVED
AUG 05 1999
Department of Water Resources

FROM: Allen Merritt DATE: August 3, 1999

TO: Transfer File No. 5437
Water Right(s): 35-08606 Part
In the Name of: JOE AGUEDA

TO: Transfer File No. 5466
Water Right(s): 35-08606 Part & 45-07336
In the Name of: ARDEL WICKEL

SUBJECT: Review and Recommendation

These two transfers deal with the split up and drying up of a farm in Eastern Region near Sterling Idaho and transferring the water down gradient in the ESPA.

Transfer 5437 proposes to dry up 15 acres at Sterling and move the water into basin 36 for use at an existing dairy which does not have a recorded water right. This application was initially protested by Lee Halper but the protest has been resolved.

Transfer 5466 proposes to dry up 113.5 acres at Sterling and move the water into basin 45 where the right will be combined with 45-07336 good to irrigate 400 acres. At the basin 45 site both rights are intended to irrigate 513.5 acres in a 581 acre PPU. This transfer was advertised without protest.

These two transfers are the first of many other similar pending transfers that have made it through the process. Recently a similar transfer in the name of Jerome Cheese was protested and a hearing was held. At issue with these types of transfers is movement of water within the ESPA from one "response zone" to another. All these types of transfers need to be reviewed in the same light.

RECOMMENDATION

I RECOMMEND THAT THESE TRANSFERS AND THOSE TO FOLLOW BE REVIEWED BY ADMINISTRATION AND HYDROLOGY TO DETERMINE CONDITIONS THAT WILL NOT CAUSE INJURY TO OTHER WATER RIGHTS WHEN MOVING WATER FROM ONE RESPONSE ZONE TO ANOTHER.

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JUL 26 2000

T # 5466

35-086066

FILE PROGRESS SUMMARY

APPLICANT: Ardell Mitchell WATER RIGHT NO. 45-07336

INIT.	DATE	COMMENT
ar	4/21/99	Stapled to Jan
JJ	4-22-99	To Mary for advertising
MB	6/8/99	Data entry
MB	6/9/99	Adv. Sch - SP 6/14 & 6/21 ; am-Dena 6/15 & 6/22/99 ; 7/2/99
MB	7/12/99 7/14/99	Pub. aff rec (6/24/99) & (6/24/99)
MB	7/14/99	to ADM for sig. signoff
AM	8/3/99	to MD the Forwarded to Norm Young.

99-224

NOTICE OF PROPOSED CHANGE TO WATER RIGHT, T# 5466

Notice is hereby given that ARDEL WICKEL, 1084 E 300 N; DECLO ID 83323 has applied to the Department of Water Resources for changes to the rights listed below. The purpose of Transfer No. 5466 is to combine an existing right with a portion of a purchased right from Eastern Idaho to create a permissible place of use.

PRESENTLY, Water Right No. 35-08606 (6.07 cfs) with a priority date of 07/01/1985 is diverted from groundwater within NE1/4NW1/4, S16, T31E for irrigation of 303.5 acres within parts of S16, T04S, R31E; Bingham County. PRESENTLY, Water Right No. 45-07336 (4.38 cfs) with a priority date of 01/24/1978 is diverted from groundwater within NW1/4NE1/4 for irrigation of 400 acres within parts of S20, T10S, R25E; Cassia County.

PROPOSED CHANGE

The applicant wishes to divert a combined total of 6.65 cfs from an existing well within NW1/4NE1/4 and possible new well within SE1/4SE1/4 for irrigation of a 513.5 acre permissible place of use within a 581 acre farm within S20, T10S, R25E; Cassia County using the following designated rights:

Rt No.	Priority	Amt (cfs)
35-08606E	07/01/1985	2.27
45-07336	01/24/1978	4.38

Any protest against the proposed changes must be filed with the Department of Water Resources, Southern Region, 1341 Fillmore St., Suite 200; Twin Falls, ID 83301 together with a protest fee of $25.00 on or before July 2, 1999 to be considered by the Department in its decision to grant or deny any part of the proposed change. The protestant must also send a copy of the protest to the applicant.

Karl J. Dreher, Director

Published in the South Idaho Press on June 14 and 21, 1999

SOUTH IDAHO PRESS
BURLEY, IDAHO
AFFIDAVIT OF PUBLICATION

County of Cassia)
) ss
STATE OF IDAHO)

Ruth Holmes, being first duly sworn, deposes and says that she is the Legals clerk of the South Idaho Press, a daily newspaper published at Burley, Idaho, in the county aforesaid and that the paper is of general circulation therein. Deponent further states that the printed notice attached hereto was duly published according to law in the regular editions of the South Idaho Press for 2 consecutive week(s), commencing with the issue dated June 14 1999 and ending with the issue dated June 21 1999.

Ruth Irene Holmes

STATE OF IDAHO)
COUNTY OF)
Cassia)

On this 21st day of June in the year of 1999 before me, a Notary Public, personally appeared Ruth Holmes, known or identified to me to be the person whose name is subscribed to the within instrument, and being by me first duly sworn, declared that the statements therein are true, and acknowledged to me that she executed the same.

Notary Public for Idaho

Residing at: Rupert, Idaho

My commission expires: 6-28-2000

Cost of Publication 63.36

Affidavit Fee 5.00

Total Cost 68.36

OK mb 7/12/99

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JUL 26 2000

RECEIVED

JUN 24 1999

Department of Water Resources
Southern Region Office

RECEIVED

JUN 24 1999

Department of Water Resources
Southern Region

DEPT. OF WATER RESOURCES
1341 Fillmore Street, Suite 200
Twin Falls, Idaho 83301-3380
Phone: (208) 736-3033
Fax: (208) 736-3037

NOTICE OF PROPOSED CHANGE TO WATER RIGHT

Notice is hereby given that ARDEL WICKEL, 1084 E. 300 N., DECLO, IDAHO, 83323, has filed Application for Transfer No 5466 with the Department of Water Resources to make changes to Water Right No. 35-08606 (6 07 cfs) with a priority date of 07/01/1985 which is diverted from groundwater within NE1/4NW1/4, S16, T31E, for irrigation of 303.5 acres within parts of S16, T04S, R31E; Bingham County The applicant has purchased (2.27 cfs) and wishes to move the water to Cassia County for irrigation use Any protest against the proposed changes must be filed with the Department of Water Resources, Southern Region, 1341 Fillmore St , Suite 200; Twin Falls, Idaho, 83301, together with a protest fee of $25 00 on or before July 2, 1999, to be considered by the Department in its decision to grant or deny any part of the proposed change The protestant must also send a copy of the protest to the applicant

KARL J. DREHER
Director

(4240)
Pub.: 6/16, 22

OK
MB
7/14/99

MICROFILMED

Legals

AFFIDAVIT OF PUBLICATION

County of Bingham)
ss
State of Idaho)

I, Jacqueline Graham do solemnly swear that I am the Legal Coordinator of The Morning News, which is a daily newspaper of general circulation, published each day except Sunday at Blackfoot, Bingham County, Idaho, said newspaper having been so published at Blackfoot, aforesaid for more than one year past; that said newspaper heretofore complied with all the provisions of Chapter 154 of the Sessions Laws of Idaho of 1911, approved March 11, 1911, and duly designated, pursuant to law, a particular day of the week as the day on which legal notices required by law or by the order of any Court of competent jurisdiction within the State of Idaho shall be published to-wit: of each week; that the notice attached hereto and which is a part of this affidavit and part of the proof of publication was published in said issue of said newspaper 1 consecutive Week the first publication having been made on the 16th day of June 1999, and the last publication having been made on the 22nd day of June 1999, that said notice was published in the regular and entire issue of every number of the paper as aforesaid during the period and time of publication, and that notice was published, in the newspaper and not in a supplement.

Jacqueline Graham

On this 22nd day of June, in the year of 1999, before me a Notary Public of the State, personally appeared Jacqueline Graham, known or identified to me to be the person whose name is subscribed to the within instrument, and being by me the first duly sworn, declared that the statements therein are true, and acknowledged to me that he executed the same

NOTARY PUBLIC
STATE OF IDAHO

Notary Public for the State of Idaho
Residing at Blackfoot, Idaho
My Commission Expires:
June 19, 2004
Affidavit Processing Fee. $5.00

06/22/99

INVOICE No. 0003464

THE MORNING NEWS
34 N ASH ST
PO BOX 70
BLACKFOOT ID 83221-0070

RECEIVED
JUN 24 1999
Department of Water Resources
Southern Region

000005335

ID DEPT OF WATER RES(TWIN)
1341 FILLMORE ST #200
TWIN FALLS ID 83301-3380

DATE	DESCRIPTION	TC	C	QUANTITY	UNIT	RATE	TOTAL
06/22/99	LEGAL #4240	LE	L	36.00	LINE	1.3200	47.52

T # 5466

35-08606E, 45-07336

OK
MB
7/14/99

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JUL 26 2000

AMOUNT DUE --> 47.52

06/22/99 INVOICE No. 0003472

THE MORNING NEWS
34 N ASH ST
PO BOX 70
BLACKFOOT ID 83221-0070

RECEIVED
JUN 24 1999
Department of Water Resources
Southern Region

000005335

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06/22/99	LEGAL AFFIDAVIT	LE	M	1.00	@	5.0000	5.00

T # 5466
35-08606E, 45-07336

OK
MB
7/14/99

06/22/99 INVOICE No. 0003464

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34 N ASH ST
PO BOX 70
BLACKFOOT ID 83221-0070

RECEIVED
JUN 24 1999
Department of Water Resources
Southern Region

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T # 5466
35-08606E, 45-07336

OK
MB
7/14/99

MICROFILMED
JUL 26 2000

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Karl J. Dreher, Director

Published in the South Idaho Press on 06/14 & 06/21/99

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JUL 2 6 2000

State of Idaho
DEPARTMENT OF WATER RESOURCES
1341 Fillmore Street, Suite 200, Twin Falls, ID 83301-3380
Phone: (208) 736-3033 FAX: (208) 736-3037

SOUTHERN REGION

June 9, 1999

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

ATTENTION-LEGALS
SOUTH IDAHO PRESS
230 EAST MAIN ST
BURLEY ID 83318

Gentlemen:

Enclosed you will find a legal notice which we wish to have published in your newspaper. We have inserted the required publication dates.

We have attempted to submit this legal as camera ready. Please call me at your earliest convenience and prior to your staff re-typing the legal if it does not meet your specifications so I can possibly make adjustments.

If you cannot publish the notice on the proposed dates, please contact us immediately.

In order to receive payment, an affidavit of publication must be submitted to the Department along with the publication bill.

Very truly yours,

Mary Baldwin
Administrative Assistant

Enclosure

MICROFILMED
JUL 26 2000

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T# 5466

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Karl J. Dreher, Director

Published in the South Idaho Press on 06/14 & 06/21/99.

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JUL 26 2000

State of Idaho
DEPARTMENT OF WATER RESOURCES
1341 Fillmore Street, Suite 200, Twin Falls, ID 83301-3380
Phone: (208) 736-3033 FAX: (208) 736-3037

SOUTHERN REGION

June 9, 1999

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

THE MORNING NEWS
PO BOX 70
BLACKFOOT ID 83221

Gentlemen:

Enclosed you will find a legal notice which we wish to have published once a week for two consecutive weekly issues of your newspaper.

We have inserted the required publication dates. If you cannot publish the notice on the proposed dates, please contact us immediately.

In order to receive payment, an affidavit of publication must be submitted to the Department along with the publication bill.

Sincerely,

Mary A. Baldwin
Administrative Assistant

MB

Enclosure

MICROFILMED
JUL 26 2000

NOTICE OF PROPOSED CHANGE TO WATER RIGHT

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Karl J. Dreher, Director

Published in the Morning News on 06/15 & 06/22/99.

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JUL 26 2000

State of Idaho
DEPARTMENT OF WATER RESOURCES
1341 Fillmore Street, Suite 200, Twin Falls, ID 83301-3380
Phone: (208) 736-3033 FAX: (208) 736-3037

SOUTHERN REGION

June 9, 1999

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

ARDEL WICKEL
1084 E 300 N
DECLO ID 83323

Re: Application for Transfer No. 5466 (35-08606E, 45-07336)

Dear Applicant:

The Department of Water Resources acknowledges receipt of your Application for Transfer.

Since the applications proposes a change in County for the point of diversion, this office has scheduled advertising the applications in both the South Idaho Press for 06/14 and 06/21/99 and in the Morning News on 06/15 & 06/22/99. A period of ten days following the second publication will be allowed for the submittal of protests with the final protest date on July 2, 1999.

If an application is protested, you will be sent a copy of the protest. The protest must be resolved before the application is approved or denied. If the protest is not resolved voluntarily, this Department will conduct a conference and/or hearing on the matter.

The department's review process may have to include field investigation and verification of the claims which is required as part of the Snake River Basin Adjudication.

State Office personnel will conduct a complete review prior to final processing of the application and will notify you of the outcome of this review.

Please feel free to contact this office if you have any questions regarding this procedure.

Very truly yours,

James E. Stanton
Sr. Water Resource Agent

JS:MB

MICROFILM

JUL 26 2000



WESTIN

HOTELS & RESORTS®

Jim,

The application looks good. Thank you for getting it changed!

Thank you

Gidel Nickel

RECEIVED
APR 2 [illegible]
Department of Water Resources
[illegible]

MICROFILMED
JUL 2 6 2000

State of Idaho
DEPARTMENT OF WATER RESOURCES
1341 Fillmore Street, Suite 200, Twin Falls, ID 83301-3380
Phone: (208) 736-3033 FAX: (208) 736-3037

SOUTHERN REGION

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

April 13, 1999

Ardel Wickel
1084 E 300 N
Declo, ID
83323

Dear Mr. Wickel;

We have received your application for a water transfer, but have not received the required filing fee of $100. Based on data that you previously supplied under Application for Permit 45-07738, I have made certain changes in your proposed transfer that should give you maximum flexibility in the operation of your irrigation system. Although your transfer also requests stockwater use, a water right is not required for this; I have therefore removed this use to avoid confusion, but can put it back on the application if you so desire. A copy of Part 1 of the transfer, which shows the proposed changes, is enclosed for your review, as is a map of the proposed system. If anything is incorrect or not acceptable, please let me know so that the transfer reflects your desires in this matter. I tried 3 times to return your phone call of last week, but received no response on your cell phone.

Regards,

James E. Stanton
Sr. Water Resource Agent

MICROFILMED
JUL 26 2000

T#5466

SD-0611-2 Basin: 35 Starting Water Right: 0860

SEL	Water Right No.	Name Last, First	OWN	Priority Date	STG/ STS	Source	Use Desc	SYS
	35-08606	HINCKS, ROY E	C	07/01/1985	L/	GROUNDWATER	IRR	WR

* NO SRBA CLAIM FILED BECAUSE PROOF WAS FILED IN 1992 FOR 35-08606

* Decreed copied to Water Right Database (G6=Print Profile Rpt) (G8=Cancel)
(Enter=Continue) (G1=Print Screen Query) (G7=This Query) (Menu _____)

35-08606
ROY HINCKS
6.07 cfs for
303.5 acres

PROPOSED TRANSFER

35-08606A
HINCKS
5.77 cfs for
288.5 acres

35-08606B
WYBENGA
0.30 cfs for
STOCKWATER & COMMERCIAL

NEEDS TO BE RENUMBERED TO A BASIN 36 RIGHT

PROPOSED TRANSFER

35-08606C
HINCKS
2.57 cfs for
128.5 acres

35-08606D
JEROME CHEESE
3.20 cfs for
COMMERCIAL

NEEDS TO BE RENUMBERED TO A BASIN 36 RIGHT

PROPOSED TRANSFER

35-08606E
HINCKS
2.27 cfs for
113.5 acres

35-08606F
AGUEDA
0.30 cfs for
STOCKWATER & COMMERCIAL

NEEDS TO BE RENUMBERED TO A BASIN 36 RIGHT

MICROFILMED
JUL 26 2000

Page _____ of _____

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

Transfer No. _____

RECEIVED
nuclear
APR 13 1999
Department of Water Resources
Southern Region

APPLICATION FOR TRANSFER OF WATER RIGHT

PART 1

Name of applicant Ardel Wickel Phone W-654-2341 H-431-2341

Post Office address 1084 E 300 N Declo Idaho 83323

A. PURPOSE OF TRANSFER

1. ☑ Change point of diversion ☐ Add diversion point(s) ☑ Change place of use
   ☐ Change nature of use ☐ Change period of use ☐ Other _____

2. Describe the reason for the proposed changes I am buying part of a water right from Roy Hincks and transferring it to my land in Declo.

B. DESCRIPTION OF RIGHT(S) OR PORTION THEREOF, AFTER THE REQUESTED CHANGE

1.

Right Number	Priority	Amount (cfs/ac-ft)	Nature of Use	Period of Use
35-08606	1985	2.27 cfs	Irrigation	Apr. 1 to Nov. 1
		.05 cfs	Stockwater	Jan. 1 to Dec. 31
				to
				to

2. Total amount of water being transferred 2.27 cubic feet per second and/or 681 acre-feet per annum.

3. Source of water Ground water tributary to _____

4. Point(s) of Diversion:

Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion
			SW	20	10S	25E	Cassia	
			NE	20	10S	25E	Cassia	

5. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	
10S	25E	20	7	7	7	7	7			7	20	35	35	35	7	7	7	7	195
10S	25E	20		5							5								

MICROFILMED
JUL 26 2000

Total 195

Page ___ of ___ Transfer No. ___

PART 1

6 General Information

a. Description of diversion system Deep well, main lines, pivots, hand lines, 200 HP pump 125 HP Booster, 10," 8" main lines

b. Are the lands from which you propose to transfer the water right subject to any liens, deeds of trust, mortgages, or contracts? ___ Yes ___ No. If yes, provide a notarized statement from the holder of the lien, deed of trust, mortgage or contract agreeing to the proposed changes. Copy of contract enclosed

c. Describe the affect on the land now irrigated if the place of use is changed pursuant to this transfer:
The land will be dried up.

d. Remarks:

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Transfer of Water Rights No. ___

And said application is hereby ___, subject to the following limitations and conditions:

Witness my hand this ___ day of ___, 19___.

MICROFILMED
JUL 26 2000

Page _____ of _____ Transfer No. _____

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR TRANSFER OF WATER RIGHT

RECEIVED
APR 13 1999
Department of Water Resources
Southern Region

PART 2

(Attach one copy for each right)

A. DESCRIPTION OF RIGHT AS RECORDED

1. Right evidenced by:

   a. Decree No. _____ Decreed to _____

   in case of _____ vs. _____

   dated _____ in _____ county of _____

   b. License No. 35-08606 issued by the Idaho Department of Water Resources.

   c. Claim No. _____ on file with the Idaho Department of Water Resources.

   d. Transfer No. _____ which produced this right.

2. Attach a copy of last year's tax notice for the property to which the water right is appurtenant or other documents which show ownership. Label document as attachment A. Check appropriate box below:

   ☐ Tax Notice ☐ Warranty Deed ☑ Other _____

3. Source of water Ground water tributary to _____

4. Date or priority 1985

5. Water is used for the following purpose:

   amount 2.27 cfs for irrigation purposes from Apr 1 to Nov 1
   (cfs/ac-ft)
   amount .05 cfs for stockwater purposes from Jan 1 to Dec 31
   (cfs/ac-ft)
   amount _____ for _____ purposes from _____ to _____
   (cfs/ac-ft)

6. Total amount of water under right 2.27 cubic feet per second and/or 681 acre-feet per annum.

7. Point(s) of Diversion:

Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion
			SW	20	10S	25E	Cassia	
—	—	—	NE	20	10S	25E	Cassia	

8. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	
10S	25E	20	7	7	7	7	7			7	20	35	35	35	7	7	7	7	195
10S	25E	20	-	5							5								

MICROFILMED JUL 26 2000

Total acres 195

9. Describe any other water rights used for the same purpose as described above _____

PART 2

Transfer No. _____

10. To your knowledge, has any portion of this water right undergone a period of five or more consecutive years of non-use?
No If yes, describe _____

B. DESCRIPTION OF PORTION OF RIGHT BEING TRANSFERRED

(If the entire right is to be changed by the applicant, omit part B and C.)

1. amount 2.27 (cfs/ac-ft) for irrigation purposes from Apr 1 to Nov 1
amount _____ (cfs/ac-ft) for _____ purposes from _____ to _____
amount _____ (cfs/ac-ft) for _____ purposes from _____ to _____

2. Point(s) of Diversion:

Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion

3. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	

Total acres _____

C. DESCRIPTION OF UNCHANGED PORTION OF RIGHT *(omit if there is no change)*

1. amount _____ (cfs/ac-ft) for _____ purposes from _____ to _____
amount _____ (cfs/ac-ft) for _____ purposes from _____ to _____
amount _____ (cfs/ac-ft) for _____ purposes from _____ to _____

2. Point(s) of Diversion:

Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion

3. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	

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JUL 26 2000

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098
Phone: (208) 327-7900 FAX: (208) 327-7866

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

December 14, 1999

RE: In the matter of Application for Transfer No. 5437 in the name of Joe Agueda

Dear Interested Parties:

The accompanying order is a **"preliminary order"** issued by the department pursuant to section 67-5243, Idaho Code. It can and will become a final order without further action of the department unless a party petitions for reconsideration within fourteen (14) days after issuance as further described below:

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a preliminary order with the hearing officer within fourteen (14) days of the service date of this order. The hearing officer will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See section 67-5243(3) Idaho Code.

EXCEPTIONS AND BRIEFS

Within twenty-one (21) days after (a) the service date of a preliminary order, (b) the service date of a denial of a petition for reconsideration from this preliminary order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this preliminary order, any party may in writing support or take exceptions to any part of a preliminary order and may file briefs in support of the party's position on any issue in the proceeding to the Director. Otherwise, this preliminary order will become a final order of the agency.

If any party appeals or takes exceptions to this preliminary order, opposing parties shall have twenty-one (21) days to respond to any party's appeal. Written briefs in support of or taking exceptions to the preliminary order shall be filed with the Director. The Director retains the right to review the preliminary order on his own motion.

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JUL 2 6 2000

T5437 Joe Agueda

Database Updated per Order 04-09-2000 GS

ORAL ARGUMENT

If the Director grants a petition to review the preliminary order, the Director shall allow all parties an opportunity to file briefs in support of or taking exceptions to the preliminary order and may schedule oral argument in the matter before issuing a final order. If oral arguments are to be heard, the Director will within a reasonable time period notify each party of the place, date and hour for the argument of the case. Unless the Director orders otherwise, all oral arguments will be heard in Boise, Idaho.

CERTIFICATE OF SERVICE

All exceptions, briefs, requests for oral argument and any other matters filed with the Director in connection with the preliminary order shall be served on all other parties to the proceedings in accordance with Rules of Procedure 302 and 303.

FINAL ORDER

The Director will issue a final order within fifty-six (56) days of receipt of the written briefs, oral argument or response to briefs, whichever is later, unless waived by the parties or for good cause shown. The Director may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. The department will serve a copy of the final order on all parties of record.

Section 67-5246(5), Idaho Code, provides as follows:

> Unless a different date is stated in a final order, the order is effective fourteen (14) days after its issuance if a party has not filed a petition for reconsideration. If a party has filed a petition for reconsideration with the agency head, the final order becomes effective when:
>
> (a) the petition for reconsideration is disposed of; or
> (b) the petition is deemed denied because the agency head did not dispose of the petition within twenty-one(21) days.

APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, if this preliminary order becomes final, any party aggrieved by the final order or orders previously issued in this case may appeal the final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which:

i. A hearing was held,
ii. The final agency action was taken,

MICROFILMED

JUL 26 2000

iii. The party seeking review of the order resides, or
iv. The real property or personal property that was the subject of the agency action is located.

The appeal must be filed within twenty-eight (28) days of this preliminary order becoming final. See section 67-5273, Idaho Code. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.

Sincerely,

L. Glen Saxton

L. GLEN SAXTON, Chief
Water Allocation Bureau

Enclosure

c: IDWR - Region

MICROFILMED
JUL 26 2000

Page 1 of 6

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

Transfer No. 5437 RECEIVED AUG 05 1999 Department of Water Resources

RECEIVED MAR 19 1999 Department of Water Resources Northern Region

APPLICATION FOR TRANSFER OF WATER RIGHT

PART 1

Name of applicant JOE AGUEDA Phone 324-6825

Post Office address 326 EAST 400 NORTH JEROME, ID 83338

A. PURPOSE OF TRANSFER

1. ☒ Change point of diversion ☐ Add diversion point(s) ☒ Change place of use ☒ Change nature of use ☒ Change period of use ☒ Other SPLIT RIGHT

DENIED Order Dated 12-13-1999

2. Describe the reason for the proposed changes

TO PROVIDE A WATER RIGHT FOR AN EXISTING DAIRY FACILITY.

B. DESCRIPTION OF RIGHT(S) OR PORTION THEREOF, AFTER THE REQUESTED CHANGE

1. Right Number	Priority	Amount (cfs/ac-ft)	Nature of Use	Period of Use
35-08606F (NEEDS TO BE RENUMBERED TO BASIN 36 RIGHT)	07/01/1985	0.30 cfs	STOCKWATER	01/01 to 12/31
		45 ac-ft	STOCKWATER	01/01 to 12/31
		0.30 cfs	COMMERCIAL	01/01 to 12/31
		45 ac-ft	COMMERCIAL	01/01 to 12/31

2. Total amount of water being transferred 0.30 cubic feet per second and/or 45 acre-feet per annum.

3. Source of water GROUNDWATER tributary to

DENIED Order Dated 12-13-1999

4. Point(s) of Diversion:

Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion
		SE	SW	27	07S	17E	JEROME	EXISTING WELL
		SE	SW	27	07S	17E	JEROME	NEW WELL TO BE DRILLED
								TO BE USED AS BACK UP

5. Lands irrigated or place of use: * AREAS WHERE LAND APPLICATION WILL OCCUR

Twp.	Rge.	Sec.	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	
07S	17E	27												S					
														C					
														C*			C*		

DENIED Order Dated 12-13-1999

MICROFILMED JUL 4 2000

Transfer No. 5437

PART 1

6 General Information:

a. Description of diversion system TWO WELLS, AND PUMPS, PIPES TO DAIRY BARN AND CORRALS.

b. Are the lands from which you propose to transfer the water right subject to any liens, deeds of trust, mortgages, or contracts? _____ Yes X No. If yes, provide a notarized statement from the holder of the lien, deed of trust, mortgage or contract agreeing to the proposed changes.

c. Describe the affect on the land now irrigated if the place of use is changed pursuant to this transfer:

ACRES WILL BE DRIED UP AND NO LONGER IRRIGATED

d. Remarks:

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Transfer of Water Rights No. _____

And said application is hereby _____, subject to the following limitations and conditions:

Witness my hand this _____ day of _____, 19____.

MICROFILMED
JUL 26 2000

TRANS NO. 5437

PART 2

A. DESCRIPTION OF RIGHT AS RECORDED:

Water Right No. **35-08606**

STAGE: **LICENSE**

BENEFICIAL USE	PERIOD OF USE	DIVERSION RATE	ANNUAL VOLUME
IRRIGATION	04/01 to 10/31	6.07 CFS	1214.0 AF

SOURCE

GROUNDWATER

Priority: 07/01/1985

LOCATION OF POINT(S) OF DIVERSION: NENW , Sec. 16, Township 04S, Range 31E
BINGHAM County

PLACE OF USE: IRRIGATION

TWN	RGE	SEC		ACRES		ACRES		ACRES	TOTAL
04S	31E	16	NENE	37	NWNE	40	SWNE	40	
			SENE	36	NENW	40	NWNW	34.2	
			SWNW	36.3	SENW	40			303.5
					Total number of acres irrigated:				303.5

CONDITIONS/REMARKS:

1. This right is for the use of trust water and is subject to review 20 years after the issuance of the permit to determine availability of water and to re-evaluate the public interest.
2. Diversion and use of water under this right is subject to an annual use fee if rules are subsequently promulgated which provide for the submittal of the fee.
3. The Director retains jurisdiction of the right and may change, add, or remove any requirement as determined to be appropriate.
4. This right when combined with all other rights shall provide no more than .02 cfs per acre nor more than 4.0 afa per acre for irrigation of the lands above.

MICROFILMED
JUL 26 2000

PART 2

Transfer No. 5437

10. To your knowledge, has any portion of this water right undergone a period of five or more consecutive years of non-use?
NO If yes, describe _____

B. DESCRIPTION OF PORTION OF RIGHT BEING TRANSFERRED

(If the entire right is to be changed by the applicant, omit part B and C.)

1. amount 0.30 cfs for IRRIGATION purposes from 04/01 to 10/31
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)

2. Point(s) of Diversion:

Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion
		NE	NW	16	04S	31E	BINGHAM	

3. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	
04S	31E	16						15											15

Total acres 15

C. DESCRIPTION OF UNCHANGED PORTION OF RIGHT *(omit if there is no change)* SUBJECT TO OTHER TRANSFERS

1. amount 5.77 cfs for IRRIGATION purposes from 04/01 to 10/31
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)

2. Point(s) of Diversion:

Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion
		NE	NW	16	04S	31E	BINGHAM	

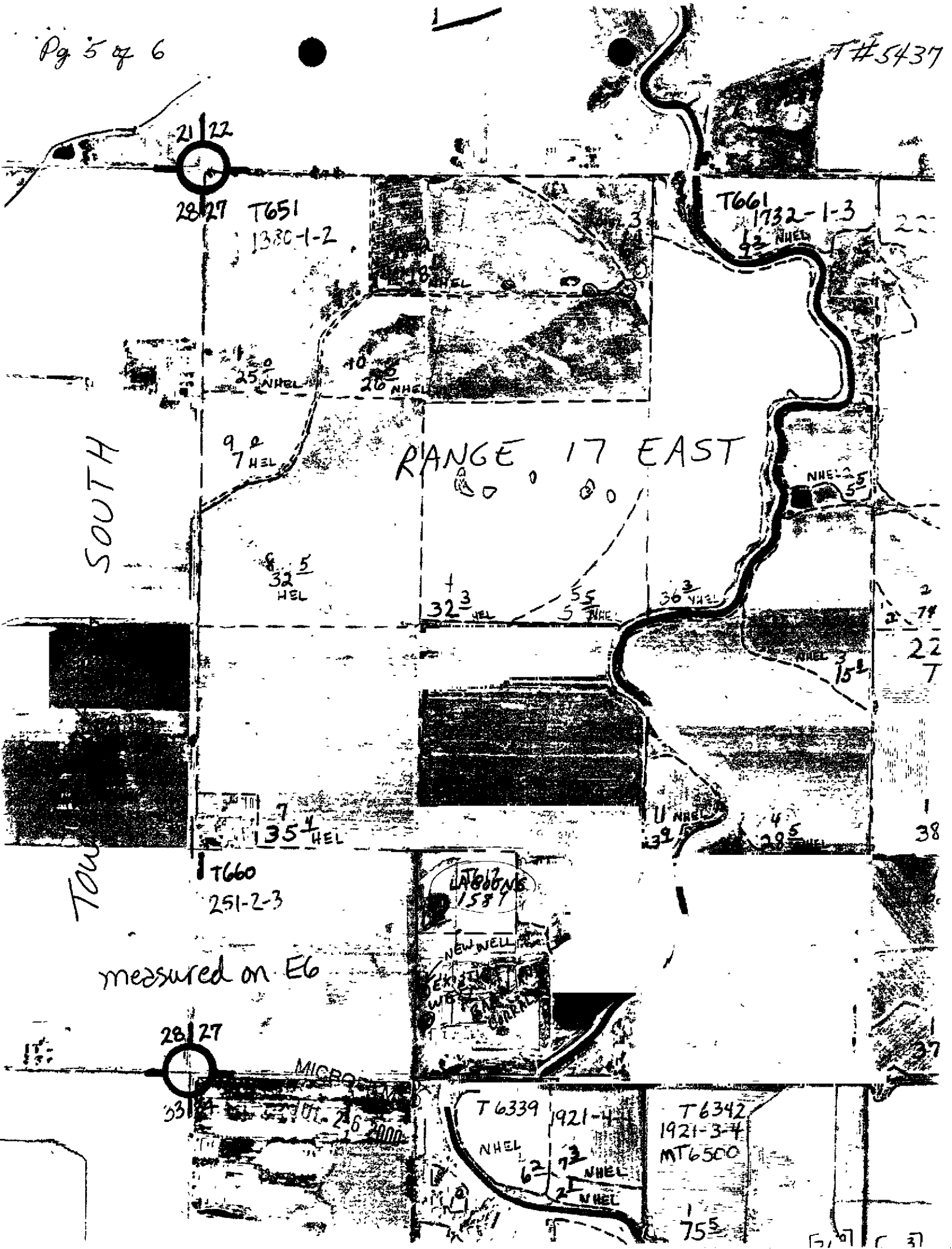
3. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	
04S	31E	16	37		40	36	40		36.3	40									288.5

MICROFILMED
JUL 26 2000

Total acres 288.5

T#5437


21 22
28 27
T651
1380-1-2
T661
1732-1-3
RANGE 17 EAST
SOUTH
T660
251-2-3
measured on E6
28 27
T 6339
1921-4
T6342
1921-3-4
MT6500

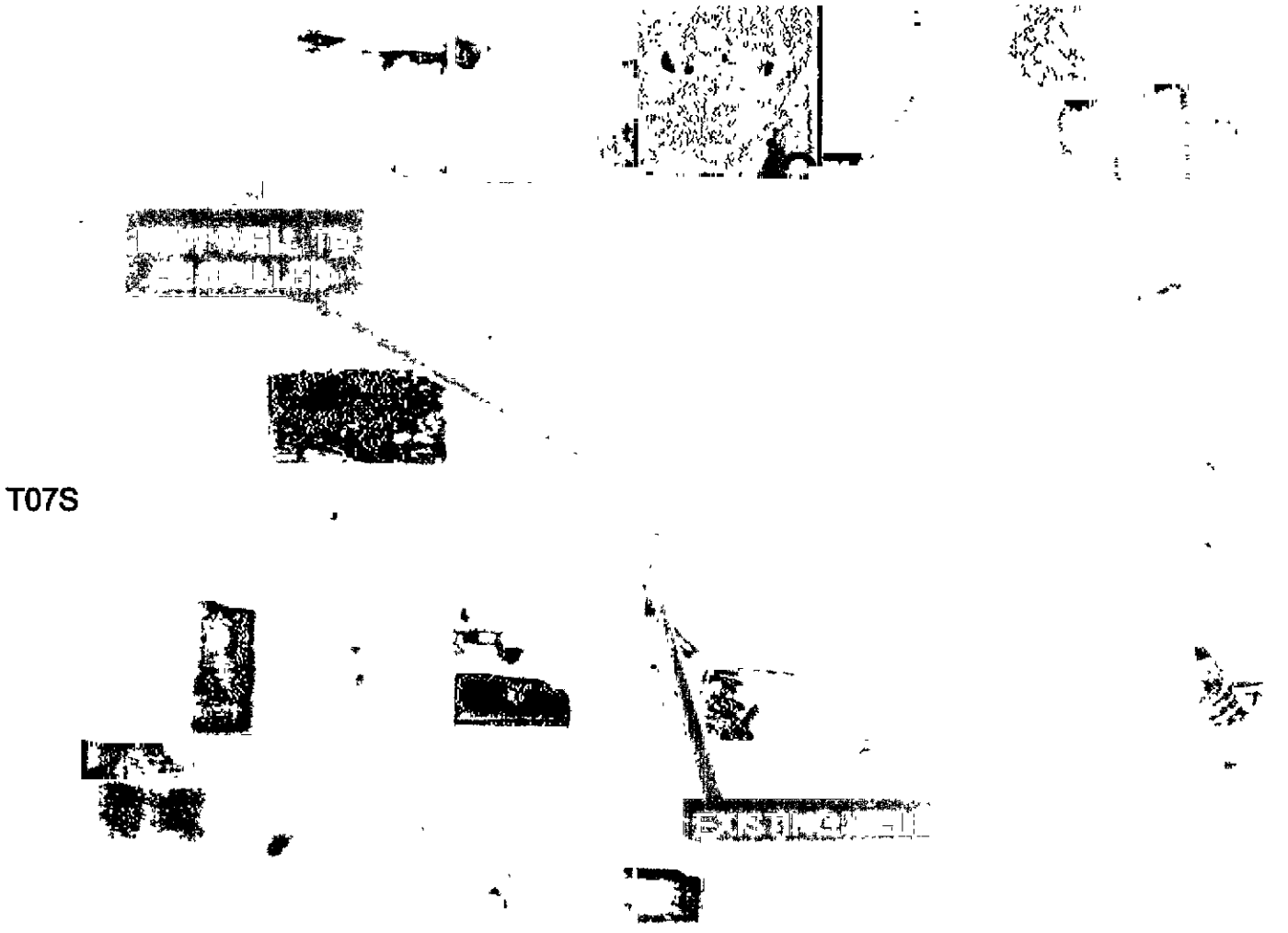
IDAHO DEPARTMENT OF WATER RESOURCES

TRANSFER # 5437

T35-08606F

POST TRANSFER CONDITIONS

RANGE 17 EAST



RESULTING PLACE OF USE

POINT OF DIVERSION

QUARTER/QUARTER LINES

SECTION LINES

MICROFILMED
JUL 26 2000

PLACE OF USE PRESENTATION
1987/1988 NAPP PHOTOGRAPHY
DATA ENTRY BY COREY SKINNER

T #5437

Transfer No. 5437

PART 3

B. CHANGES IN NATURE OF USE

1	New Nature of Use	Amount (cfs/ac-ft)	Hours/days/year	Period of Use
	STOCKWATER	0.30cfs/45AC-FT	AS NEEDED	01/01 to 12/31
	COMMERCIAL	0.30cfs/45 AC-FT	AS NEEDED	01/01 to 12/31

2 Quantity and quality of return flows and location of discharge:

WASTE WATER FROM LAGOONS WILL BE LAND APPLIED IN THE SESW 1/4 AND SWSE 1/4 OF SECTION 27 (T07S, R17E)

3. Describe effects on other water uses resulting from the proposed change:

NO APPARENT EFFECTS

I hereby assert that no one will be injured by such change and that the change does not constitute an enlargement in use of the original right. The information contained in this application is true to the best of my knowledge.

I understand that any willful misrepresentations made in this application may result in voiding its approval.

JEANIE ROBERTSON NOTARY PUBLIC STATE OF IDAHO

Joe Agueda
(Signature of Applicant)

Subscribed and sworn to before me this 18th. day of March, 19 99.

Jeanie Robertson
(Notary Public)

My commission expires 9-23-2000

FOR DEPARTMENT USE ONLY

Transfer contains 6 pages and 2 attachments

Received by C. SKINNER Date 03/18/1999 Protest filed by

Prelim. check by CS Fee #100.00 5021899

Receipted by C. SKINNER Date 03/18/1999

Published in The Morning News & North Side News Copies of protest forwarded by

Pub. dates 4/15 & 4/22/99 Hearing held by Date

Watermaster recommendation requested on N/A Recommended for ☐ approval ☐ denial

rec'd. by

Copy of transfer sent to lien holder

MICROFILMED
JUL 26 2000

RECEIVED
MAR 1 5 1999
Department of Water Resources
Southern Region

MEMORANDUM OF AGREEMENT

THIS AGREEMENT Made and entered into this 9 day of MARCH, 1999, by and between Roy Hincks, Sterling, Idaho (hereinafter "Vendor") Joe Agueda 567-31-1565 of 326 E 400 N Jerome, Idaho hereinafter "Vendee")

WITNESSETH

WHEREAS, Vendor is the owner of a license, or permit for approximately 300 inches of ground water, which ground water is Water Rite number 35-08606 on file with the Idaho Department of Water Resources, and,

WHEREAS, Vendee is the owner of a Dairy located in Jerome County Idaho and,

WHEREAS, Vendor desires to sell to Vendee, and Vendee desires to purchase from Vendor 15 inches of the above described water for the sum of four hundred dollars ($400 00) per inch for a total amount of Six thousand dollars ($6,000 00)

NOW, THEREFORE, it is agreed between the parties as follows

1 In consideration of the sum of $6,000 00 Vendor sells and Vendee purchases 15 inches of ground water

2. The agreed purchase price of $6,000 00 shall be payable as follows

One Thousand Dollars ($1,000 00) Ernest monies cash And the balance of Four Thousand dollars (~~$4,000 00~~ ($5,000+/-) JA RH) upon completion of the appropriate property descriptions have been identified and the Department of Water Resources has approved the transfer

3 The cash will be deposited in the Land Title & Escrow Inc Trust Account and held until such time as the appropriate property descriptions have been identified and the Department of Water Resources has approved the transfer

4 Vendor makes no warranties or guarantees that the transfer will be approved by the Department of Water Resources

5 Vendee acknowledges that it has ascertained from sources other than Vendor, the applicable zoning and other regulatory ordinances regarding the use of the 15 inches of water and Vendor has made no representations with respect thereto

This agreement shall be binding upon the heirs personal representatives, administrators, successors and assigns of the parties hereto

In the event this water cannot be transferred within 120 days this agreement shall be void and the money returned to Vendee It being understood that the money shall be deposited in the Land Title & Escrow Inc Trust Account, which is a non-interest bearing account In the event the parties wish to extend this agreement beyond the 120 days hereof, they shall so indicate in writing However, each party agrees to be responsible for paying one-half (1/2) the costs of the Land Title & Escrow Inc fees for the escrow account.

IN WITNESS WHEREOF the parties have hereunto set their hands the day and year first above written

Roy Hincks
SS # 518-32-2613
2851 W 900 S
Sterling, Idaho 83210
"VENDOR"

Joe Agueda
Joe Agueda
SS# 567-31-1565
326 E 400 N
Jerome, Idaho 83338
"VENDEE"

MICROFILMED
JUL 26 2000

T#5437

RECEIVED
AUG 05 1999
Department of Water Resources

FROM: Allen Merritt DATE: August 3, 1999

TO: Transfer File No. 5437
Water Right(s): 35-08606 Part
In the Name of: JOE AGUEDA

TO: Transfer File No. 5466
Water Right(s): 35-08606 Part & 45-07336
In the Name of: ARDEL WICKEL

SUBJECT: Review and Recommendation

These two transfers deal with the split up and drying up of a farm in Eastern Region near Sterling Idaho and transferring the water down gradient in the ESPA.

Transfer 5437 proposes to dry up 15 acres at Sterling and move the water into basin 36 for use at an existing dairy which does not have a recorded water right. This application was initially protested by Lee Halper but the protest has been resolved.

Transfer 5466 proposes to dry up 113.5 acres at Sterling and move the water into basin 45 where the right will be combined with 45-07336 good to irrigate 400 acres. At the basin 45 site both rights are intended to irrigate 513.5 acres in a 581 acre PPU. This transfer was advertised without protest.

These two transfers are the first of many other similar pending transfers that have made it through the process. Recently a similar transfer in the name of Jerome Cheese was protested and a hearing was held. At issue with these types of transfers is movement of water within the ESPA from one "response zone" to another. All these types of transfers need to be reviewed in the same light.

RECOMMENDATION

I RECOMMEND THAT THESE TRANSFERS AND THOSE TO FOLLOW BE REVIEWED BY ADMINISTRATION AND HYDROLOGY TO DETERMINE CONDITIONS THAT WILL NOT CAUSE INJURY TO OTHER WATER RIGHTS WHEN MOVING WATER FROM ONE RESPONSE ZONE TO ANOTHER.

MICROFILMED
JUL 26 2000

FILE PROGRESS SUMMARY

T#5437

APPLICANT: Joe Aguedo WATER RIGHT NO. 35-086067

INIT.	DATE	COMMENT
ajs	3/18/99	Staffed to Cary Skinner
CS	3/26/99	GAVE APPLICATION TO MARY FOR ADVERTISING
MB	3/31/99	Data entry
MB	4/1/99	Adv. Sch - The Morning News & NSN 4/15 & 4/22/99; 5/3/99
CS	5/10/99	COMPLETED GIS WORK
MB	5/11/99	Pub. aff. rec. (4/27/99) NSN
MB	5/3/99	Protest received
MB	5/12/99	Pub. aff. rec. (MN)
MB	5/14/99	Prot. ack. ltr sent & Notice of Prot. ltr sent
MB	7/23/99	Withdrawal of Prot. rec.
MB	8/3/99	Ack. LTR. sent to former prot. & applicant
AD	8/3/99	To MB & forwrd to Norm Young

FORM 22a
9/96

IDWR TRANSFER ANALYSIS SHEET

APPLICANT Joe Aguilera TRANSFER NO. 5437

1. Right number(s) 35-08606 F

2. Type of right ___ Decree X License ___ Statutory Claim
___ SRBA Beneficial Use Claim

3. Purpose of transfer X Change P/D ___ Add P/D X Change P/U
X Change N/U ___ Change Source X Split Right
X Other: CHANGE PERIOD OF USE

4. Check Existing Right: X Source X Priority X Amount X Purpose
X Period X SRBA Claim
X Description of original point(s) of diversion
X Description of original place of use
X Overlapping rights on original place of use

Comments: NO SRBA CLAIM SINCE PROOF WAS FILED FOR 35-08606 IN 1992. NO OVERLAPS AT CURRENT PLACE OF USE.

5. Check Proposed Right for amount of land &/or water transferred:

X Also see attached memo for more analysis information

a. ___ All of right

b. X Part of right (*NOTE: Part B should be filled in only if part of right is owned by the applicant*)

c. X Description of point(s) of diversion

d. X Description of place of use

e. X Map showing P/D & P/U after transfer

f. X Correct notarized signature and $100 fee

g. X Proof of ownership of right &/or land from which water is transferred SALES AGREEMENT BETWEEN ROY HINCKS AND APPLICANT. HINCKS IS OWNER OF CURRENT POU PER 03/08/99

h. X Expansion in use of right - Comments: TELECOM WITH BINGHAM COUNTY ASSESSOR'S OFFICE NONE APPARENT

i. X Existing rights from same source, on land water is being transferred to; right number(s): NONE

36-14860 IS OUT OF A DIFFERENT WELL AND USED ON A SEPERATE PARCEL (SOUTH OF CANAL)

j. X SRBA claim(s) - Comments (*NOTE: Approved transfer amends SRBA claim; differences between existing water right and SRBA claim? any ownership or other outstanding issues?* Explain) NO SRBA CLAIM

k. X Comment letters ___ Yes X No
If yes ___ Water District #
___ Lienholder, others, see #2 below for name and address

INITIAL ALLOCATION REVIEW BY J. SKINNER DATE 3/26/99
SRBA SUPERVISOR REVIEW BY _____ DATE _____
PUBLICATION REVIEW BY _____ DATE _____

1. Legal Notice electronically sent to DWR03::VAULT ___ Yes

2. COMMENT LETTERS Copy of Pg 1 to AJ ___ Yes

Watermaster recommendation requested on _____, Received on _____

Other comments letters - send to the following name(s) & address(es):

3. Transfer published correctly? ✓ Yes ___ No

4. Affidavit of publication received? ✓ Yes ___ No

5. Protests received? ✓ Yes ___ No; Acknowledgement sent? ✓ Yes

6. Copies made for Region file (see attached supplemental page)? ___ Yes

RECOMMENDED ACTION Withdrawn 7/23/99

1. ___ Approve ?

2. ___ Deny due to Administration & Hydrology Review

3. Conditions (special conditions in Water Districts) _____

X Also see attached memo for recommendation dated: 8/3/99

4. By _____ Date 8/3/99

State of Idaho
DEPARTMENT OF WATER RESOURCES
1341 Fillmore Street, Suite 200, Twin Falls, ID 83301-3380
Phone: (208) 736-3033 FAX: (208) 736-3037

SOUTHERN REGION

August 2, 1999

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

JOE AGUEDA
326 E 400 N
JEROME ID 83338

RE: Protested Application for Transfer No. 5437

Dear Mr. Agueda:

We have received a withdrawal of the protest filed by Lee Halper against approval of the above referenced application.

Since he was the only protestant, the issue of the protest has been resolved and the Department is now prepared to proceed with the normal processing of the application which includes regional review prior to being forwarded to our State Office.

If you have any questions or if this office can be of further assistance, please feel free to contact us.

Very truly yours,

Allen D. Merritt, P.E.
Southern Region Manager

AM:MB

MICROFILMED
JUL 26 2000

State of Idaho
DEPARTMENT OF WATER RESOURCES
1341 Fillmore Street, Suite 200, Twin Falls, ID 83301-3380
Phone: (208) 736-3033 FAX: (208) 736-3037

SOUTHERN REGION

August 2, 1999

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

LEE HALPER
331 S 230 W
JEROME ID 83338

RE: Application for Transfer No. 5437-Joe Agueda

Dear Mr. Halper:

This office acknowledges receipt of the withdrawal of your protest against the above referenced application.

Since you were the only protestant, the issue of the protest has been resolved and the Department is now prepared to proceed with the normal processing of the application which includes regional review prior to being forwarded to our State Office.

The Department will continue review of the application without further contact with you unless information is requested.

Please feel free to contact this office if you have any questions regarding this procedure.

Very truly yours,

Allen D. Merritt, P.E.
Southern Region Manager

AM:MB

MICROFILMED

JUL 26 2000

RECEIVED
JUL 2 2 1999
Department of Water Resources
Southern Region

Subject: WITHDRAWAL OF PROTEST
Date: Thu, 22 Jul 1999 20:24:34 -0600
From: slvrchst@magiclink.com
To: allen merritt <amerritt@idwr.state.id.us>

Dear Allen,
As to Transfer # 5437, Joe Agueda, Applicant. I hereby formally withdraw my protest in this matter. I will mail you a hard copy of this tomorrow. Thanks.
Lee Halper
331 S 230 W
Jerome, Id 83338
208-324-2240

MICROFILMED
JUL 2 6 2000

Merritt, Allen

From: slvrchst@magiclink.com
Sent: Thursday, July 22, 1999 8:25 PM
To: allen merritt
Subject: WITHDRAWAL OF PROTEST

Dear Allen,
As to Transfer # 5437, Joe Agueda, Applicant. I hereby formally withdraw my protest in this matter. I will mail you a hard copy of this tomorrow. Thanks.
Lee Halper
331 S 230 W
Jerome, Id 83338
208-324-2240

MICROFILMED
JUL 26 2000

State of Idaho
DEPARTMENT OF WATER RESOURCES
1341 Fillmore Street, Suite 200, Twin Falls, ID 83301-3380
Phone: (208) 736-3033 FAX: (208) 736-3037

SOUTHERN REGION

May 14, 1999

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

JOE AGUEDA
326 E 400 N
JEROME ID 83338

RE: APPLICATION FOR TRANSFER NO. 5437 (35-08606F)

Dear Mr. Agueda:

Enclosed is a copy of a protest filed against the above referenced application. The Department suggests you contact the protestant(s) directly to determine the exact nature of the protest(s) and, if possible, to resolve the matter without action by the Department.

Please note that your application is considered a contested case and subject to the Rules of Procedure adopted by the Department.

If you need a copy of these rules, please contact this office. The Rules of Procedure are also available on the Internet by using the IDWR Homepage at the following electronic address:

http://www.idwr.state.id.us/apa/idapa37/0101.htm

The attachment to this letter describes the issues which the Department must consider in taking action on an application. It also gives a brief description of the conference and hearing procedure followed by the Department in resolving protested applications.

If you wish to proceed with a Pre-hearing Conference &/or formal Hearing, please notify this office.

If you have any questions or if this office can be of further assistance, please feel free to contact us.

Very truly yours,

Allen D. Merritt, P.E.
Southern Region Manager

AM:MB

Enclosure(s)

MICROFILMED
JUL 26 2000

State of Idaho
DEPARTMENT OF WATER RESOURCES
1341 Fillmore Street, Suite 200, Twin Falls, ID 83301-3380
Phone: (208) 736-3033 FAX: (208) 736-3037

SOUTHERN REGION

May 14, 1999

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

LEE HALPER
331 S 230 W
JEROME ID 83338

RE: APPLICATION FOR TRANSFER NO. 5437 (35-08606F)

Dear Mr. Halper:

Your protest against the approval of the above referenced application has been received and a copy has been sent to the applicant with the suggestion that he contact you directly to determine the exact nature of the protest and, if possible, to resolve the matter without action by the Department.

Please note that the application is considered a contested case and subject to the Rules of Procedure adopted by the Department.

If you need a copy of these rules, please contact this office. The Rules of Procedure are also available on the Internet by using the IDWR Homepage at the following electronic address:

http://www.idwr.state.id.us/apa/idapa37/0101.htm

The attachment to this letter describes the issues which the Department must consider in taking action on an application. It also gives a brief description of the conference and hearing procedure followed by the Department in resolving protested applications.

If you have any questions or if this office can be of further assistance, please feel free to contact us.

Very truly yours,

Allen D. Merritt, P.E.
Southern Region Manager

AM:MB
Enclosure(s)

MICROFILMED
JUL 26 2000

3/96

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
NOTICE OF PROTEST

RECEIVED
MAY 03 1999
Department of Water Resources
Southern Region

This form may be used to file a protest with the department under sections 42-108B, 42-203A, 42-203C, 42-211, 42-222 and 42-224, Idaho Code. The department will also accept a timely protest not completed on this form if it contains the same information.

1. Matter being protested TRANSFER #54307 JOE AGUEDA (#5437)
2. Name of protestant LEE HALPER
3. Protestant's representative for service (If different than protestant)

4. Service mailing address 331 S 230 W JEROME ID 83338
5. Service telephone no. 324-2240
6. Basis of protest (including statement of facts and law upon which the protest is based)

NOT WITHE PUBLIC'S INTEREST
PROOF NOT OFFERED TO SUPPORT 42-222 ISSUES

(additional pages may be attached to describe the nature of the protest)

7. What would resolve your protest? APPLICANTS WITHDRAWAL OF TRANSFER

I hereby, acknowledge that if I, or my designated representative, fails to appear at any regularly scheduled conference or hearing in the matter of which I have been notified at the address above, the department may issue a notice of proposed default against me in this matter for failure to appear. I also verify that I have served a copy of this protest upon the applicant.

Signed this 30th day of APRIL, 1999.

PROTESTANT

PROTESTANT'S REPRESENTATIVE

MICROFILMED
JUL 26 2000

NOTE:

A protestant is required to timely file a protest with the department together with a $25.00 protest fee for each application being protested in order for the protestant to be considered a full party by the department. In addition, the department's Rule of Procedure, IDAPA 37.01.01203, requires a protestant to send a copy of a protest to the applicant.

INSTRUCTIONS

1. The matter being protested must be clearly identified. A typical matter is identified by the application number such as "Application for Permit No. _____ in the name of _____" or "Application for Transfer No. _____ in the name of _____."

2. Show the name of the protestant. Only one (1) protestant may be shown per protest form. If this protest form is signed by more than one person, the hearing officer will consider the first signer as the official protestant and the representative for service of documents.

3. If the protestant is represented by an attorney or other authorized representative, show the representative's name. The department then will serve documents on the representative and upon the protestant if specifically requested.

4. Show the address where the department is to serve the documents. This should be the address of the authorized representative unless the protestant does not designate a representative.

5. Show the telephone number of the authorized representative unless the protestant does not designate a service representative.

6. Specifically describe the nature of the protest.

7. Describe the relief being sought by the protestant.

FOR DEPARTMENT USE ONLY

Received by aeh Date 5/3/99 Time 12:15

$25.00 fee Receipted by aeh # SO 22092 Date 5/3/99

MICROFILMED
JUL 26 2000

AFFIDAVIT of PUBLICATION

RECEIVED
APR 2 1999
Department of Water Resources
Southern Region

State of Idaho } ss.
County of Jerome }

Patty Nance, being first duly sworn, deposes and says that he/she is the printer (publisher) of the Jerome North Side News, a newspaper published every week in Jerome, County of Jerome, State of Idaho, that said newspaper has been continuously and uninterruptedly published for a period of seventy-eight consecutive weeks prior to the first publication of the annexed notice, and is a newspaper qualified to publish legal notices as provided by ... of the 1919 session of the legislature of the State of Idaho, known as House Bill 145; that the annexed advertisement was published once each week for 2 consecutive issues in said newspaper proper and not in a supplement, that the date of the first publication of said advertisement was on the 15th day of April, 1999, and the date of the last publication was on the 22nd day of April, 1999

Patty Nance

On this 22nd day of April, in the year of 1999, before me, a Notary Public, personally appeared Patty Nance, known or identified to me to be the person whose name subscribed to the within instrument, and being by me first duly sworn, declared that the statements therein are true, and acknowledged to me that he/she executed the same.

Notary Public for Idaho
Residing at Jerome, Id
My commission expires: 3/6/01

#7964 / 25677
NORTH SIDE NEWS
Jerome, Idaho

OK mb 5/11/99

COST OF PUBLICATION

Number of Picas per Line _____
Number of Lines in Notice _____
Number of Insertions 2X

_____ Lines tabular at _____ 7¢/Pica
637.31 Lines straight at 38.24 6¢/Pica
637.31 Subsequent lines at 31.87 5¢/Pica
Affidavit Fee: 2.25
TOTAL COST 72.36

MICROFILMED 2006

COPY OF NOTICE

(Paste Here)

T#5436+5437-Jerome Cheese

TITLE OF NOTICE

PLAINTIFF ATTORNEY

DEFENDANT

PLAINTIFF
IDWR

BILL TO

NOTICE OF PROPOSED CHANGES TO WATER RIGHTS

Notice is hereby given that applications have been filed with the Department of Water Resources to make changes to Right No. 35-08606. PRESENTLY, Water Right No. 35-08606 (6.07 cfs) with a priority date of 07/01/1985 is diverted from groundwater within NE1/4NW1/4, S16, T04S, R31E; Bingham County for irrigation of 303.5 acres within N1/2, S16, T04S, R31E; Bingham County. Transfer No. 5436 filed by JEROME CHEESE CO., ATTN REX MINCHEY, PO BOX 485; JEROME ID 83338 proposes to dry up 160 acres in Bingham County, divert and use 3.20 cfs from Designated Water Right No. 35-08606D by drilling two new wells within NW1/4NE1/4, S25, T08S, R16E for commercial cheese factory use in Jerome County. Transfer No. 5437 filed by JOE AGUEDA, 326 E 400 N; JEROME ID 83338 proposes to dry up 15 acres in Bingham County. The applicant wishes to divert and use a combined 0.30 cfs from one (1) existing well and one (1) new well within SE1/4SW1/4, S27, T07S, R17E; Jerome County for the following dairy uses:

Right No.*Priority*Amt (cfs)*Use
36-08606F*07/01/1985*0.30*
Stockwater & Commercial

Any protest against the proposed changes must be filed with the Department of Water Resources, Southern Region, 1341 Fillmore St., Suite 200; Twin Falls, ID 83301 together with a protest fee of $25.00 on or before May 3, 1999 to be considered by the Department in its decision to grant or deny any part of the proposed change. (Each transfer requires a separate protest). The protestant must also send a copy of the protest to the applicant.

Karl J. Dreher, Director

PUB: 4/15 - 4/22 N25677

RECEIVED

MAY 12 1999

Department of Water Resources
Southern Region

DEPT. OF WATER RESOURCES
1341 Fillmore Street, Suite 200
Twin Falls, Idaho 83301-3380
Phone: (208) 736-3033
Fax: (208) 736-3037

NOTICE OF PROPOSED CHANGES TO WATER RIGHTS

NOTICE IS HEREBY GIVEN that applications have been filed with the Department of Water Resources for changes to a right. **PRESENTLY**, Water Right No. 35-08606 (6.07 cfs) with a priority date of 07/01/1985 is diverted from groundwater within NE1/4NW1/4, S16, T04S, R31E; Bingham County for irrigation of 303.5 acres within N1/2, S16, T04S, R31E; Bingham County. Transfer No. 5436 filed by **STEVE &/or DARLA WYBENGA**, 662 SPRING COVE RD; BLISS, IDAHO 83314, proposes to dry up 15 acres in Bingham County. The applicant wishes to use a combined 0.36 cfs for stockwater/commercial uses in an existing dairy in Gooding County. Transfer No. 5436 filed by **JEROME CHEESE CO.**, Attn: REX MINCHEY, P.O. Box 485; JEROME, ID. 83338 proposes to dry up 160 acres in Bingham County. The applicant wishes to use 3.20 cfs in a commercial cheese factory in Jerome County. Transfer No. 5437 filed by **JOE AGUEDA**, 326 E. 400 N.: JEROME, IDAHO 83338 proposes to dry up 15 acres in Bingham County. The applicant wishes to use a combined 0.30 cfs for stockwater/commercial uses in an existing dairy in Jerome County. Any protest against the proposed changes must be filed with the Department of Water Resources, Southern Region, 1341 Fillmore Street, Suite 200, Twin Falls, Idaho, 83301, together with a protest fee of $25.00 on or before May 3, 1999 to be considered by the Department in its decision to grant or deny any part of the proposed change. **(Each transfer requires a separate protest).** The protestant must also send a copy of the protest to the applicant.

KARL J. DREHER
Director

(4154)
Pub.: 4/15, 22

OK
NB
5/12/99

MICROFILMED

JUL 26 2000

Affidavit of Legal Publication

AFFIDAVIT OF PUBLICATION

County of Bingham)
ss
State of Idaho)

I, Jacqueline Graham do solemnly swear that I am the Legal Coordinator of The Morning News, which is a daily newspaper of general circulation, published each day except Sunday at Blackfoot, Bingham County, Idaho, said newspaper having been so published at Blackfoot, aforesaid for more than one year past; that said newspaper heretofore complied with all the provisions of Chapter 154 of the Sessions Laws of Idaho of 1911, approved March 11, 1911, and duly designated, pursuant to law, a particular day of the week as the day on which legal notices required by law or by the order of any Court of competent jurisdiction within the State of Idaho shall be published to-wit: of each week; that the notice attached hereto and which is a part of this affidavit and part of the proof of publication was published in said issue of said newspaper 2 consecutive Weeks the first publication having been made on the 15th day of April 1999; and the last publication having been made on the 22nd day of April 1999; that said notice was published in the regular and entire issue of every number of the paper as aforesaid during the period and time of publication, and that notice was published, in the newspaper and not in a supplement.

Jacqueline Graham

On this 22nd day of April in the year of 1999, before me a Notary Public of the State, personally appeared Jacqueline Graham, known or identified to me to be the person whose name is subscribed to the within instrument, and being by me the first duly sworn, declared that the statements therein are true, and acknowledged to me that the executed the same.

NOTARY PUBLIC STATE OF IDAHO

Notary Public for the State of Idaho
Residing at Blackfoot, Idaho
My Commission Expires
June 19, 2004
Affidavit Processing Fee.....$5.00

-/22/99 INVOICE No. 0001878

THE MORNING NEWS
34 N ASH ST
PO BOX 70
BLACKFOOT ID 83221-0070

RECEIVED
MAY 12 1999
Department of Water Resources
Southern Region

000005340

ID Dept of Water Resources
1341 Filmore St #200
Twin Falls ID
83301-3380

DATE	DESCRIPTION	TC	C	QUANTITY	UNIT	RATE	TOTAL
/22/99	LEGAL #4154	LE	L	53.00	LINE	1.3200	69.96

T# 5435
T# 5436
T# 5437

OK MB 5/12/99

MICROFILMED
JUL 26 2000

AMOUNT DUE --> 69.96

04/22/99 INVOICE No. 0001879

THE MORNING NEWS
34 N ASH ST
PO BOX 70
BLACKFOOT ID 83221-0070

000005340

ID Dept of Water
1341 Filmore St #200
Twin Falls, ID
83301-3380

RECEIVED
MAY 12 1999
Department of Water Resources
Southern Region

DATE	DESCRIPTION	TC C	QUANTITY	UNIT	RATE	TOTAL
4/22/99	LEGAL AFFIDAVIT	LE N	1.00	@	5.0000	5.00

T#5435
T#5436
T#5437

OK
MB
5/12/99

MICROFILMED
JUL 26 2000

AMOUNT DUE --> 5.00

NOTICE OF PROPOSED CHANGES TO WATER RIGHTS

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Transfer No. 5437 filed by **JOE AGUEDA**, 326 E 400 N; JEROME ID 83338 proposes to dry up 15 acres in Bingham County. The applicant wishes to divert and use a combined 0.30 cfs from one (1) existing well and one (1) new well within SE1/4SW1/4, S27, T07S, R17E; Jerome County for the following dairy uses:

Right No.*Priority*Amt (cfs)*Use
36-08606F*07/01/1985*0.30*
Stockwater & Commercial

Any protest against the proposed changes must be filed with the Department of Water Resources, Southern Region, 1341 Fillmore St., Suite 200; Twin Falls, ID 83301 together with a protest fee of $25.00 on or before May 3, 1999 to be considered by the Department in its decision to grant or deny any part of the proposed change. **(Each transfer requires a separate protest).** The protestant must also send a copy of the protest to the applicant.

Karl J. Dreher, Director

Published in the North Side News on 04/15 & 04/22/99.

MICROFILMED
JUL 2 6 2000

State of Idaho
DEPARTMENT OF WATER RESOURCES
1341 Fillmore Street, Suite 200, Twin Falls, ID 83301-3380
Phone: (208) 736-3033 FAX: (208) 736-3037

SOUTHERN REGION

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

LEGALS DEPT
MAGIC VALLEY PUBLISHING CO
ATTN North Side News
PO BOX 468
JEROME ID 83338

Gentlemen:

Enclosed you will find a legal notice which we wish to have published in your newspaper. We have inserted the required publication dates.

We have attempted to submit this legal as camera ready. Please call me at your earliest convenience and prior to your staff re-typing the legal if it does not meet your specifications so I can possibly make adjustments.

If you cannot publish the notice on the proposed dates, please contact us immediately.

In order to receive payment, an affidavit of publication must be submitted to the Department along with the publication bill.

Very truly yours,

Mary Baldwin
Administrative Assistant

Enclosure

MICROFILMED
JUL 26 2000

State of Idaho
DEPARTMENT OF WATER RESOURCES
1341 Fillmore Street, Suite 200, Twin Falls, ID 83301-3380
Phone: (208) 736-3033 FAX: (208) 736-3037

SOUTHERN REGION

April 2, 1999

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

ATTN LEGALS
THE MORNING NEWS
PO BOX 70
BLACKFOOT ID 83221

Gentlemen:

Enclosed you will find a legal notice which we wish to have published once a week for two consecutive weekly issues of your newspaper.

We have inserted the required publication dates. If you cannot publish the notice on the proposed dates, please contact us immediately.

In order to receive payment, an affidavit of publication must be submitted to the Department along with the publication bill.

Sincerely,

Mary A. Baldwin
Administrative Assistant

MB

Enclosure

MICROFILMED
JUN 26 2000

NOTICE OF PROPOSED CHANGES TO WATER RIGHTS

Notice is hereby given that applications have been filed with the Department of Water Resources for changes to a right.

PRESENTLY, Water Right No. 35-08606 (6.07 cfs) with a priority date of 07/01/1985 is diverted from groundwater within NE1/4NW1/4, S16, T04S, R31E; Bingham County for irrigation of 303.5 acres within N1/2, S16, T04S, R31E; Bingham County.

Transfer No. 5435 filed by **STEVE &/OR DARLA WYBENGA**, 662 SPRING COVE RD; BLISS ID 83314 proposes to dry up 15 acres in Bingham County. The applicant wishes to use a combined 0.36 cfs for stockwater/commercial uses in an existing dairy in Gooding County.

Transfer No. 5436 filed by **JEROME CHEESE CO.**, ATTN REX MINCHEY, PO BOX 485; JEROME ID 83338 proposes to dry up 160 acres in Bingham County. The applicant wishes to use 3.20 cfs in a commercial cheese factory in Jerome County.

Transfer No. 5437 filed by **JOE AGUEDA,** 326 E 400 N; JEROME ID 83338 proposes to dry up 15 acres in Bingham County. The applicant wishes to use a combined 0.30 cfs for stockwater/commercial uses in an existing dairy in Jerome County.

Any protest against the proposed changes must be filed with the Department of Water Resources, Southern Region, 1341 Fillmore St., Suite 200; Twin Falls, ID 83301 together with a protest fee of $25.00 on or before May 3, 1999 to be considered by the Department in its decision to grant or deny any part of the proposed change. **(Each transfer requires a separate protest).** The protestant must also send a copy of the protest to the applicant.

Karl J. Dreher, Director

Published in The Morning News on 04/15 & 04/22/99.

MICROFILMED

JUL 26 2000

State of Idaho
DEPARTMENT OF WATER RESOURCES
1341 Fillmore Street, Suite 200, Twin Falls, ID 83301-3380
Phone: (208) 736-3033 FAX: (208) 736-3037

SOUTHERN REGION

April 1, 1999

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

JOE AGUEDA
326 E 400 N
JEROME ID 83338

Re: Application for Transfer No. 5437 (35-08606 Pt)

Dear Mr. Agueda:

The Department of Water Resources acknowledges receipt of your Application for Transfer.

Since the applications proposes a change in County for the point of diversion, this office has scheduled advertising the applications in both The Morning News & North Side News for 04/15 and 04/22/99. A period of ten days following the second publication will be allowed for the submittal of protests with the final protest date on May 3, 1999.

If an application is protested, you will be sent a copy of the protest. The protest must be resolved before the application is approved or denied. If the protest is not resolved voluntarily, this Department will conduct a conference and/or hearing on the matter.

State Office personnel will conduct a complete review prior to final processing of the application and will notify you of the outcome of this review.

Please feel free to contact this office if you have any questions regarding this procedure.

Sincerely yours,

Corey Skinner, E.I.T.
Safety of Dams Engineer

cs:mb

MICROFILMED

JUL 2 6 2000

MEMORANDUM

TO: Joe Agueda Transfer Application File

FROM: Corey Skinner /S

DATE: March 26, 1999

SUBJECT: Staff Review

The enclosed transfer application, filed in the name of Joe Agueda, seeks to change a portion of an irrigation water right to stockwater and commercial purposes for a dairy operation. The base right for the transfer is irrigation right 35-08606 that is currently appurtenant to property located a few miles north of Aberdeen. The site of the dairy is located within the south ½ of Section 27 (T07S, R17E), which is about five miles northeast of Jerome. The transfer application should be fairly straight forward, but some additional information should probably be considered before acting on the application.

As previously mentioned, water right 35-08606 is currently appurtenant to property located north of Aberdeen. There is no associated SRBA claim for this particular right, since proof of beneficial use was filed on this right after the commencement of the SRBA. The enclosed application seeks to take a 15 acre (0.30 cfs & 45 AFA consumptive use volume) portion of 35-08606 and convert this portion to stockwater and commercial use for a dairy operation located about five miles north east of Jerome. The Aberdeen area and the Jerome area are both located within the boundaries of the Easter Snake River Plain Aquifer. However, the proposed change in the point of diversion, and place of use, is over 75 miles. The proposed change in location results in a down gradient move with respect to the underground aquifer.

Mr. Aguida came into the office a couple of months ago and discussed water requirements at his dairy. Mr. Aguida and I ran through some water use requirement estimates for his dairy. A couple of variations of the Department's LOTUS program were used and the U of I work sheet was used to estimate the water requirements. Our estimates for water use at Mr. Aguida's dairy ranged from just over 20 AFA to about 34 AFA. The notes from this meeting have been included with the enclosed transfer application. Mr. Aguida plans on purchasing a 0.30 cfs and 45 AFA consumptive use volume portion of right 35-08606. Mr. Aguida said that he wanted to be on the safe side and give himself some cushion if needed, so he is attempting to transfer 45 AFA of water to his dairy. The site of the dairy is within the boundaries of the West Measurement District. Therefore, if the enclosed transfer is approved, measurement and reporting will be required, so information regarding actual water use at the dairy should be available.

MICROFILMED
JUL 26 2000

T # 5437

JOE AGUIDA

JANUARY OF 1999

Worksheet 1. Calculating Daily Herd Requirements for Fresh Water

Drinking Water Estimates (see Table 1 & 2)

	Number	Estimated Use (gallons per day) Individual per day	Total
Milking Cows	530	28	14840
Dry Cows	130	12	1560
Heifers			
16-24 mo	____	____	____
13-15 mo	____	____	____
9-12 mo	____	____	____
5-8 mo	40	184	184
3-4 mo	30	75	75
0-2 mo	15	37	37

Total herd drinking water used A. 16696 gallons/day ⇒ 18.7 acre-ft/yr

Wash Pen Estimate (see Table 3)

1 - Sprinkler discharge per nozzle _____

2 - Number of nozzles _____

3 - Minutes per day used _____

Total wash pen water used (Line 1 x line 2 x line 3) B. 0

Milk house and Parlor Estimate (see Table 4)

	Water per operation	Gallons per day
Bulk tank	116 (ONCE A DAY)	116
Pipeline	140 (TWICE A DAY)	280
Backflush	NONE	0
Cleanup (Parlor, milk house and holding pen)	____	396
Cow prep	____	____
Plate cooler (ignore if water recycled)	____	____

Total milk house and parlor water used C. 1896 gallons per day

> 1500 gallons/day

2.12 Acre-ft/yr

TOTAL FRESH WATER ESTIMATE (A + B + C) 20.82 Acre-feet/year ÷3 ⇒ 6.94 acres

Stockwater!

20 acre feet

LOTUS #1 MANUAL 29.1 acre-feet/year ÷3 ⇒ 9.7 acres

LOTUS #2 AUTOMATIC 33.9 acre-feet/year ÷3 ⇒ 11.3 acres

MICROFILMED

JUL 26 2000

T#5437

Table 1. Herd Makeup

Category	Number	% of Herd	Average Weight (lbs)
Milking Cows	83	83	1400
Dry Cows	17	17	1550
Total Mature Cows	100		
Heifers			
16-24 mo	42	38	1050
13-15 mo	13	12	800
9-12 mo	19	17	600
5-8 mo	19	17	400
3-4 mo	9	8	250
0-2 mo	9	8	150
Total Replacements	111		

Table 2. Water Intake for Dairy Cattle

		Temperature (F)		
Weight (lb)	Milk (lb)	40° & below	60°	80°
(Lactating cows)		----------gallons/day----------		
1400	20[2]	12.0	14.5	17.9
	60[2]	22.0	26.1	24.7
	80[2]	27.0	31.9	38.7
	100[2]	32.0	37.7	45.7
(Dry cows)				
1400[1]	-	9.7	12.0	16.2
1600[1]	-	10.4	12.8	17.3
(Heifers)				
1200[1]	-	8.7	10.8	14.5
800	-	6.3	7.9	10.6
400	-	3.7	4.6	6.1
200	-	2.0	2.5	3.3

[1]Maintenance and pregnancy.
[2]Maintenance and milk production.

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Table 3. Nozzle discharge - Gallons per minute

	Nozzle diameter in inches				
psi	1/8	9/64	5/32	11/64	3/16
40	2.96	3.74	4.61	5.54	6.64
45	3.13	3.99	4.91	5.91	7.03
50	3.30	4.18	5.15	6.19	7.41
55	3.46	4.37	5.39	6.48	7.77

Table 4. Standard Volumes of Milk house and Parlor Waste

Washing operation	Water volume
Bulk tank	
450-2000 gallon	46 gallons/wash
3000-4000 gallon	78 gallons/wash
5000 + gallon	116 gallons/wash
Silo tank	126 gallons/wash
Pipeline	
<16 parlor stalls	60 gallons/wash
16> parlor stalls	140 gallons/wash
Backflush of milker	.5 gal/cow/milking
Parlor/milk house/holding pen cleanup	400 - 900 gallons/wash
Cow prep	
automatic	1-4 gal/wash/day
manual	.25 - 5 gal/wash/day
Plate cooler (ignore if water is recycled)	8 gal/cow/day

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SD-0611-2 Basin: 35 [redacted]arting Water Right: 0860[redacted]

SEL	Water Right No.	Name Last, First	OWN	Priority Date	STG/ STS	Source	Use Desc	SYS
_	35-08606	HINCKS, ROY E	C	07/01/1985	L/	GROUNDWATER	IRR	WR

* NO SRBA CLAIM FILED BECAUSE PROOF WAS FILED IN 1992 FOR 35-08606

* Decreed copied to Water Right Database (G6=Print Profile Rpt) (G8=Cancel)
(Enter=Continue) (G1=Print Screen Query) (G7=This Query) (Menu _____)

