AMENDED

State of Idaho
Department of Water Resources

AMENDED

Permit to Appropriate Water

NO. 36-08785

Priority: October 29, 1998

Maximum Diversion Rate: 16.00 CFS

This is to certify, that BUCKEYE FARMS INC
18335 U S HWY 30
HAGERMAN ID 83332

has applied for a permit to appropriate water from:

Source: RILEY CREEK **Tributary:** SNAKE RIVER

and a permit is APPROVED for development of water as follows:

BENEFICIAL USE	PERIOD OF USE	RATE OF DIVERSION
RECREATION	1/01 to 12/31	16.00 CFS
WILDLIFE	1/01 to 12/31	16.00 CFS
FISH PROPAGATION	1/01 to 12/31	16.00 CFS
AESTHETIC	1/01 to 12/31	16.00 CFS

LOCATION OF POINT OF DIVERSION:
RILEY CREEK L6 (SW¼NE¼) Sec. 1, Twp 08S, Rge 13E, B.M., GOODING County

PLACE OF USE: RECREATION, WILDLIFE & AESTHETIC

Twp Rge Sec	NE				NW				SW				SE				Totals
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
07S 13E 33	X	X	X	X				X					X	X		X	
		L 1	L 4					L 4					L 10	L 5		L 9	
07S 13E 34							X		X	X	X		X	X			
							L 7		L 3	L 4	L 5		L 1	L 2			

PLACE OF USE: FISH PROPAGATION

Twp Rge Sec	NE				NW				SW				SE				Totals
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
07S 13E 34							X		X								
							L 7		L 3								

CONDITIONS OF APPROVAL

1. Proof of application of water to beneficial use shall be submitted on or before **November 01, 2009.**
2. Subject to all prior water rights.
3. Use of water under this right shall be non-consumptive.
4. This water right shall be junior and subordinate to other rights for the use of water, other than fish propagation, wildlife, recreation, aesthetic purposes, and hydropower in the State of Idaho that are initiated later in time than the priority date of this right and shall not give rise to any claim against any future rights for the use of water, other than fish propagation, wildlife, recreation, aesthetic uses, or hydropower within the State of Idaho initiated later in time than the priority of this right.

State of Idaho
Department of Water Resources

Permit to Appropriate Water

NO. 36-08785

5. Use of water under this right will be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 36A.
6. Prior to diversion of water under this right, the right holder shall install and maintain a measuring device and lockable controlling works of a type acceptable to the Department as part of the diverting works. Additionally, the right holder, in coordination with the watermaster and the Department, shall identify a suitable location for a measuring device or rated section in Riley Creek that will measure the flows of Riley Creek to insure the bypass below the Conyer Ditch (Le Moyne Diversion) as described in the conditions of this permit. The right holder shall pay the costs of installing and maintaining the measuring device or rated section.
7. During the period from March 16 of each year to September 15 of the year, the applicant may only divert 8 cfs when the flow in Riley Creek immediately downstream of the Conyer Ditch (Le Moyne Diversion) is equal to or less than 45 cfs. When the flow in Riley Creek is greater than 45 cfs immediately downstream of the Conyer Ditch (Le Moyne Diversion), the applicant may divert 8 cfs and any amount in excess of 45 cfs up to a total of 16 cfs (subject to other conditions). In a written agreement, the right holder and the protestant agreed to the preceding diversion limitations based on flows in Riley Creek.
8. Water is diverted through the Hunt Ditch.
9. Diversion and use of water under this right and all other rights diverted by the right holder from Riley Creek shall not exceed a total combined maximum diversion rate of 38.45 cfs.
10. This right does not authorize construction of new fish propagation facilities or expansion or enlargement of wildlife, recreation or aesthetic ponds or features not already authorized under existing rights held by the right holder. (See rights 36-7741 and 36-8729)
11. The diversion and use of water described in permit 36-8785 may be subject to additional conditions and limitations agreed to by the Idaho Department of Fish and Game and the right holder under separate agreement dated July 26, 2004, to which the Department is not a party and which may be enforceable by a court of law.
12. The right holder shall not divert water at a rate exceeding what is reasonably necessary for the beneficial use authorized by this right.
13. The Director retains jurisdiction to require a bypass flow for maintenance of fish, wildlife, riparian and aquatic habitat.
14. Should the use of the water under this right reduce the quality of water available to prior water rights and make it unusable to satisfy the prior appropriations, the right holder shall cease diversion under this right.
15. Any license issued by IDWR pursuant to the right 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.

This permit is issued pursuant to the provisions of Section 42-204, Idaho Code. Witness the signature of the Director, affixed at Boise, this 8th day of July, 2005.

Gary Spackman

FOR KARL J DREHER, Director

State of Idaho
Department of Water Resources

Permit to Appropriate Water

NO. 36-08785

Priority: October 29, 1998 Maximum Diversion Rate: 16.00 CFS

This is to certify, that BUCKEYE FARMS INC
18335 U S HWY 30
HAGERMAN ID 83332

has applied for a permit to appropriate water from:

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and a permit is APPROVED for development of water as follows:

BENEFICIAL USE	PERIOD OF USE	RATE OF DIVERSION
RECREATION	1/01 to 12/31	16.00 CFS
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FISH PROPAGATION	1/01 to 12/31	16.00 CFS
AESTHETIC	1/01 to 12/31	16.00 CFS

LOCATION OF POINT OF DIVERSION:
RILEY CREEK L6 (SW¼NE¼) Sec. 1, Twp 08S, Rge 13E, B.M., GOODING County

PLACE OF USE: RECREATION, WILDLIFE & AESTHETIC

Twp Rge Sec	NE				NW				SW				SE				Totals
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
07S 13E 33	X	X L 1	X L 4	X				X L 4					X L 10	X L 5		X L 9	
07S 13E 34							X L 7		X L 3	X L 4	X L 5		X L 1	X L 2			

PLACE OF USE: FISH PROPAGATION

Twp Rge Sec	NE				NW				SW				SE				Totals
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
07S 13E 34							X L 7		X L 3								

CONDITIONS OF APPROVAL

1. Proof of application of water to beneficial use shall be submitted on or before **November 01, 2009.**
2. Subject to all prior water rights.
3. Use of water under this right shall be non-consumptive.
4. The rate of diversion for fish propagation, wildlife, recreation, and aesthetic uses authorized by this right shall be junior and subordinate to all other rights for the use of water, other than fish propagation, wildlife, recreation, or aesthetic purposes, within the State of Idaho that are initiated later in time than the priority of this right and shall not give rise to any claim against any future rights for the use of water, other than fish propagation, wildlife, recreation, or aesthetic uses within the State of Idaho initiated later in time than the priority of this right.

State of Idaho
Department of Water Resources

Permit to Appropriate Water

NO. 36-08785

5. Use of water under this right will be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 36A.
6. Prior to diversion of water under this right, the right holder shall install and maintain a measuring device and lockable controlling works of a type acceptable to the Department as part of the diverting works. Additionally to facilitate watermaster regulation of this right, the right holder shall install and maintain a measuring device or rated section on Riley Creek immediately downstream from the Conyer Ditch (Le Moyne Diversion) prior to diversion of water under this right. The location and design of the measuring device or rated section shall be subject to the approval of the Director and the watermaster of Water District No. 36A.
7. During the period from March 16 of each year to September 15 of the year, the applicant may only divert 8 cfs when the flow in Riley Creek immediately downstream of the Conyer Ditch (Le Moyne Diversion) is equal to or less than 45 cfs. When the flow in Riley Creek is greater than 45 cfs immediately downstream of the Conyer Ditch (Le Moyne Diversion), the applicant may divert 8 cfs and any amount in excess of 45 cfs up to a total of 16 cfs (subject to other conditions).
8. Water is diverted through the Hunt Ditch.
9. Diversion and use of water under this right and all other rights diverted by the right holder from Riley Creek and other sources for the uses authorized by this right shall not exceed a total combined maximum diversion rate of 38.45 cfs from all sources.
10. This right does not authorize construction of new fish propagation facilities or expansion or enlargement of wildlife, recreation or aesthetic ponds or features not already authorized under existing rights held by the right holder. (See rights 36-7741 and 36-8729)
11. The diversion and use of water described in this right may be subject to additional conditions and limitations agreed to by the protestant(s) and the right holder under separate agreement to which the Department is not a party and which may be enforceable by a court of law.
12. The right holder shall not divert water at a rate exceeding what is reasonably necessary for the beneficial use authorized by this right.
13. The Director retains jurisdiction to require a bypass flow for maintenance of fish, wildlife, riparian and aquatic habitat.
14. Should the use of the water under this right reduce the quality of water available to prior water rights and make it unusable to satisfy the prior appropriations, the right holder shall cease diversion under this right.
15. Any license issued by IDWR pursuant to the right 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.

This permit is issued pursuant to the provisions of Section 42-204, Idaho Code. Witness the signature of the Director, affixed at Boise, this 24th day of November, 2004.

for KARL J DREHER, Director

FORM 202
1/96

Ident. No. 36-28785

RECEIVED
OCT 29 1998
Department of Water Resources
Southern Region

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR PERMIT

To appropriate the public waters of the State of Idaho

RECEIVED
NOV - 9 2004
DEPARTMENT OF WATER RESOURCES

1. Name of Applicant Buckeye Farms, Inc.* Phone 208-837-4815
   Post Office Address 18335 U.S. Hwy. 30, Hagerman, ID 83332
2. Source of water supply Riley Creek which is a tributary of Snake River
3. Location of point of diversion is _____ 1/4 of SW 1/4 of NE 1/4, Govt. Lot 6
   Sec. 1 Township 8S Range 13E B.M. Gooding County; additional points of diversion if any: _____
4. Water will be used for the following purposes:
   Amount 16.00 (cfs ~~or acre-feet per annum~~) for Wildlife purposes from 1/1 to 12/31 (both dates inclusive)
   Amount 16.00 (cfs ~~or acre-feet per annum~~) for Recreation purposes from 1/1 to 12/31 (both dates inclusive)
   Amount 16.00 (cfs ~~or acre-feet per annum~~) for Aesthetic purposes from 1/1 to 12/31 (both dates inclusive)
   Amount 16.00 (cfs ~~or acre-feet per annum~~) for Fish Propagation purposes from 1/1 to 12/31 (both dates inclusive)
5. Total quantity to be appropriated is (a) 16.00 (cubic feet per second) and/or (b) _____ (acre feet per annum)
6. Proposed diverting works:
   a. Description of ditches, flumes, pumps, headgates, etc. Existing Hunt Ditch
   b. Height of storage dam _____ feet; active reservoir capacity _____ acre-feet; total reservoir capacity _____ acre-feet; period of year when water will be diverted to storage: _____ to _____ inclusive.
   c. Proposed well diameter is _____ inches; proposed depth of well is _____ feet.
   d. Is ground water with a temperature of greater than 85°F being sought? _____
   e. If well is already drilled, when? _____; Drilling firm _____;
   Well was drilled for (well owner) _____
7. Time required for completion of works and application of water to proposed beneficial use is 5 years (*minimum 1 year*)
8. Description of proposed uses (*if irrigation only, go to item 9*):
   a. Hydropower; show total feet of head and proposed capacity if KW. _____
   b. Stockwatering; list number and kind of livestock. _____
   c. Municipal; show name of municipality. _____
   d. Domestic; show number of households. _____
   e. Other; describe fully. Enhance wildlife, recreation, aesthetic, and fish propagation in existing facilities.

*Please see list of corporation officers attached.

9. Description of place of use:

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

b. If water is used for other purposes, place a symbol of the use (*example: D for Domestic*) in the corresponding place of use below. See instructions for standard symbols.

TWP	RGE	SEC	N E				N W				S W				S E				TOTALS
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
7S	13E	33	W *+	W+ Lt1	W+ Lt4	W*+				W Lt4					W+ Lt10	W+ Lt5		W Lt9	
		34							WH* Lt7		WH Lt3	W*+ Lt4	W* Lt5		W Lt1	W Lt2			

\+ JB Hunt Placer M.S. #1
* Starr Hunt/Jack Rabbit Placer M.S. #801

Total number of acres to be irrigated _____

10. Describe any other water rights used for the same purposes as described above. 36-07741, 36-08729, 36-07742, 36-08730, 36-07739, 36-08335, 36-07740, 36-08728

11. a. Who owns the property at the point of diversion? State of Idaho/LeMoyne

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 enable the applicant to make this filing: Applicant has existing rights in the Hunt Ditch with this P/D.

12. Remarks: Place of use for recreation and aesthetic are the same as wildlife.

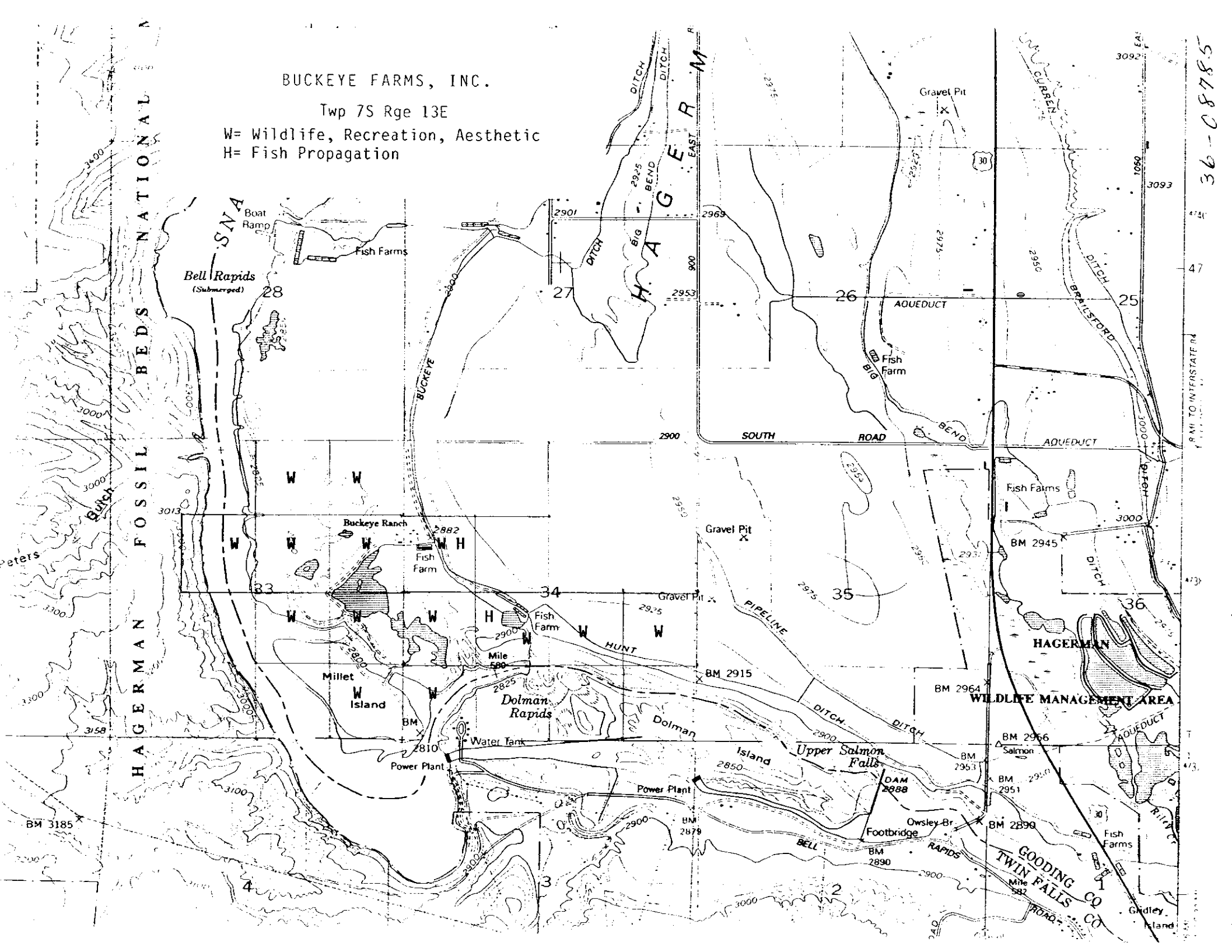
13. **MAP OF PROPOSED PROJECT ATTACHED** _____ Show clearly the proposed point of diversion, place of use, section number, township and range number.

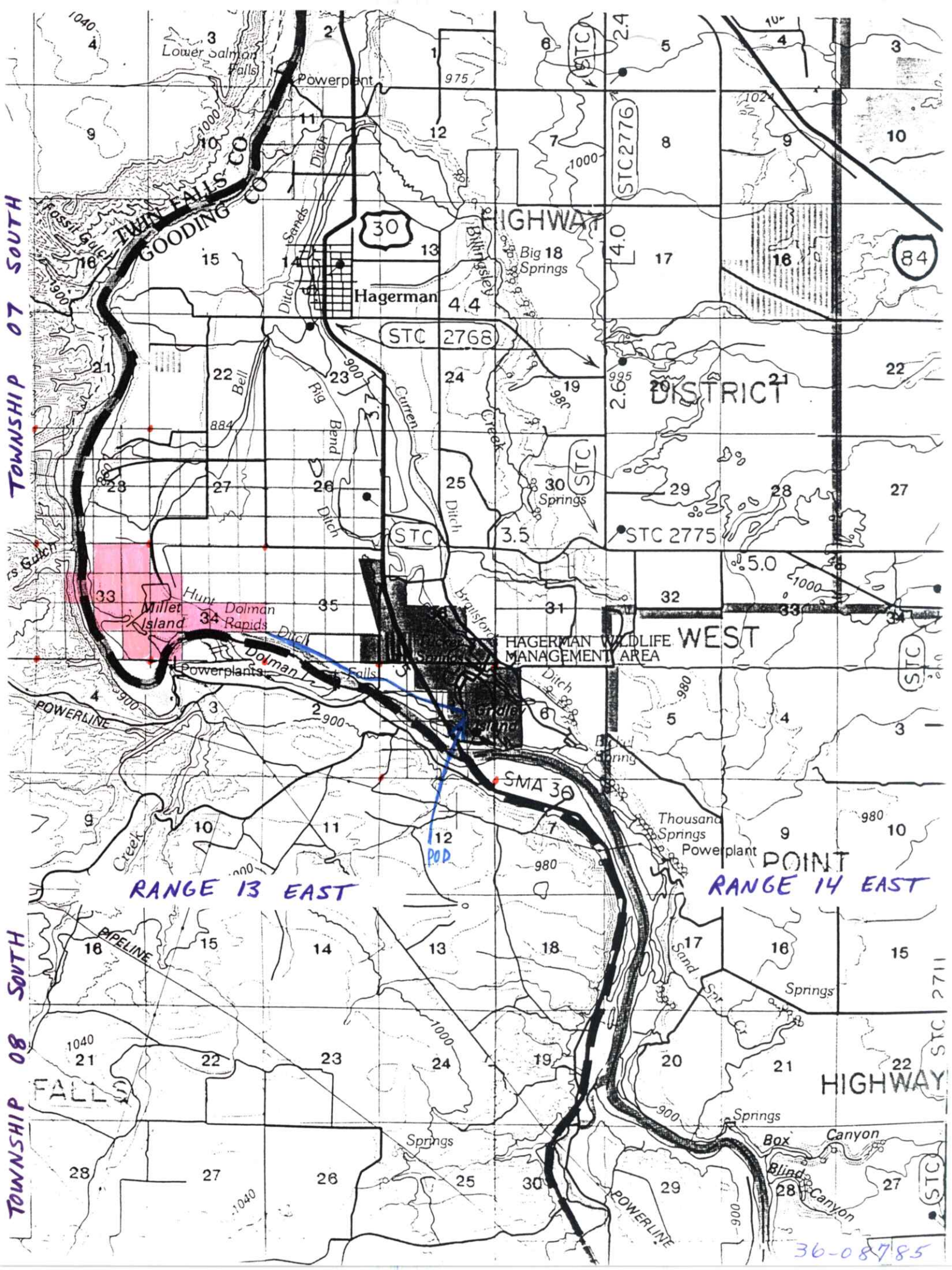
BE IT KNOWN that the undersigned hereby makes this application for permit to appropriate the public waters of the State of Idaho as herein set forth.

Buckeye Farms, Inc.

By: John A. Rosholt
Power of Atty (Applicant)

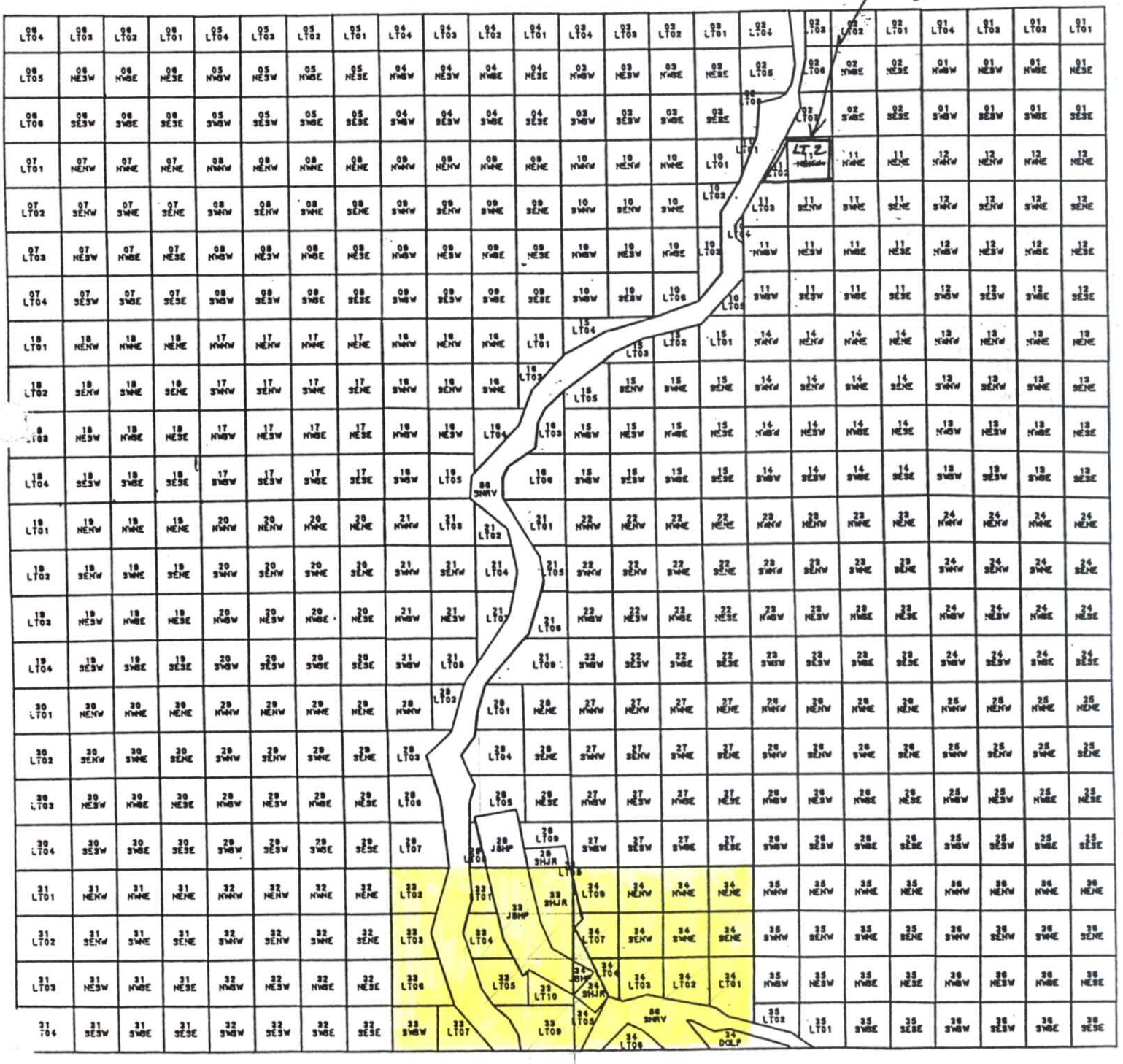
Received by A. SKINNER Date 10/29/98 Time NOONISH Preliminary check by A. SKINNER
Fee $ 400.00 Receipted by A. SKINNER # 502157 Date 10/29/1998
Publication prepared by MB Date 12/17/98 Published in Weekly Gem Leader
Publication approved MB Date 1/15, 1/19, 1/21/99 of Statesman


BUCKEYE FARMS, INC.
Twp 7S Rge 13E
W= Wildlife, Recreation, Aesthetic
H= Fish Propagation
HAGERMAN FOSSIL BEDS NATIONAL
Bell Rapids
(Submerged)
Boat Ramp
Fish Farms
Buckeye Ranch
Fish Farm
Gravel Pit
Millet Island
Dolman Rapids
Dolman Island
Upper Salmon Falls
Power Plant
Water Tank
Footbridge
Owsley Br
BELL RAPIDS
HAGERMAN WILDLIFE MANAGEMENT AREA
SOUTH ROAD
AQUEDUCT
PIPELINE
HUNT
BIG BEND DITCH
BRAILSFORD DITCH
GOODING CO
TWIN FALLS CO
BM 2945
BM 2915
BM 2964
BM 2966
BM 2953
BM 2951
BM 2890
BM 2879
BM 3185
BM 2810
Mile 588
Mile 587
DAM 2888
Gridley Island
36-08785


TOWNSHIP 07 SOUTH
TOWNSHIP 08 SOUTH
RANGE 13 EAST
RANGE 14 EAST
TWIN FALLS CO
GOODING CO
Lower Salmon Falls
Powerplant
Hagerman
HIGHWAY
Big Springs
Billingsley Creek
Ditch
Sands Ditch
Fossil Gulch
Bell Ditch
Big Bend Ditch
Curren Creek
Ditch
Millet Island
Hunt
Dolman Rapids
Dolman Falls
Powerplants
POWERLINE
HAGERMAN WILDLIFE MANAGEMENT AREA
WEST
DISTRICT
STC 2768
STC 2775
STC 2776
STC
SMA 30
POD
Thousand Springs Powerplant
POINT
Springs
Box Canyon
Blind Canyon
PIPELINE
FALLS
HIGHWAY
30
84
36-08785

C7S13E

ALL GOV LOT 2
Per CARTER
AS OF 8-4-92
NEW PAGE TO BE
SENT FROM S.O.
KKC



36-08785

LIMITED POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS:

The undersigned hereby nominates and appoints JOHN A. ROSHOLT, of 142 Third Avenue N., Twin Falls, Idaho 83301, as attorney-in-fact with full authority to act for and on behalf of Buckeye Farms, Inc., an Idaho corporation, to file water right claims in the Snake River Basin Adjudication and to execute any and all documents required or necessary to file and perfect such rights for the properties of Buckeye Farms, Inc., for which corporation I am the secretary, located in Gooding County, Idaho.

My agent is hereby authorized to sign, seal and deliver, as my act in deed, those said instruments of writing that may be necessary or proper to carry into execution and effect the above-mentioned. Further, I hereby declare that each and every agreement, receipt or payment which shall be by my said agent given, made or done for the aforesaid purposes shall be as good, valid and effectual as if they had been signed, sealed and delivered by me in my own proper person for said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal:

This 31st day of August, 1988.

John A. Burke
JOHN A. BURKE
Secretary Buckeye Farms, Inc.

STATE OF IDAHO)
) ss.
County of Blaine)

On this 31st day of AUGUST, 1988, before me, a Notary Public, in and for said County and State, personally appeared JOHN A. BURKE, Secretary of BUCKEYE FARMS, INC., the corporation that executed the foregoing instrument, and acknowledged to me that such corporation executed the same.

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

NOTARY PUBLIC FOR IDAHO
Residing at: Hailey
My commission expires: 7-5-91

0192m

Buckeye Farms Inc.
18335 Hwy. 30
Hagerman, IID 83332
208-837-4815
fax 208-837-4998

facsimile transmittal

To:	Dave Shaw	Fax:	373-7985
From:	Marilyn Yore	Date:	04/21/98
Re:	Officers and Addresses	Pages:	1
CC:	Brian Barsotti		

☐ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycl

Stoney Burke, President, PO Box 326, Sun Valley, Idaho 83353

Alex Higgins, Secretary, PO Box 552, Ketchum, Idaho 83340

Peter Gray, Treasurer, PO Box 2162, Ketchum, Idaho 83340

Z. Wayne Griffin, PO Box 5807, Ketchum, Idaho 83340

Brian Barsotti, PO Box 10013, Ketchum, Idaho 83340

Stephen Pauley, PO Box 3759, Ketchum, Idaho 83340

CONFIDENTIAL

NOW STARTING RIGHT SIDE OF FILE

State of Idaho
DEPARTMENT OF WATER RESOURCES
322 East Front Street, P.O. Box 83720, Boise, ID 83720-0098
Phone: (208) 287-4800 Fax: (208) 287-6700 Web Site: www.idwr.idaho.gov.

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

July 11, 2005

BUCKEYE FARMS INC
18335 U S HWY 30
HAGERMAN ID 83332

RE: Permit 36-8785

Dear Permit Holder:

The Department of Water Resources (IDWR) has revised Permit 36-8785 in response to your petition for reconsideration. The revised permit is an **amended preliminary order** issued by IDWR pursuant to §67-5243, *Idaho Code*. The revised permit issued in connection with the order supersedes the permit issued on November 24, 2004. **The amended 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 in the enclosed information sheet.**

If you have questions, please contact me at (208) 287-4947.

Sincerely,

Shelley W. Keen

Shelley W. Keen
Water Rights Supervisor

Enclosures

Cc: Allen Merritt, IDWR Southern Region
John Simpson

State of Idaho
DEPARTMENT OF WATER RESOURCES
322 East Front Street, P.O. Box 83720, Boise, ID 83720-0098
Phone: (208) 287-4800 Fax: (208) 287-6700 Web Site: www.idwr.idaho.gov.

DIRK KEMPTHORNE
Governor
KARL J. DREHER
Director

May 4, 2005

JOHN K SIMPSON
BARKER ROSHOLT & SIMPSON LLP
205 N 10th STREET STE 520
BOISE ID 83702

Re: Application for Water Right no. 36-8785

Dear Mr. Simpson:

On November 24, 2004, the Idaho Dept. of Water Resources (IDWR) issued a permit for application to appropriate water no. 36-8785 in the name of Buckeye Farms Inc (Buckeye). You filed, on behalf of Buckeye, a Motion for Reconsideration/Request for Hearing. You raised several issues about the approval, summarized below in the order the issues were raised:

Condition no. 4 – Whether IDWR should or has the authority to subordinate permit no. 36-8785 and any subsequently issued license to "all other rights for the use of water, other than fish propagation, wildlife, recreation, or aesthetic purposes . . . that are initiated later in time than the priority of this right."

Condition no. 6 – Whether Buckeye should be required to install and maintain a measuring device to measure the flows of Riley Creek downstream of the proposed point of diversion.

Condition no. 9 – Whether the diversion proposed by application no. 36-8785 "and all other rights diverted by the right holder from Riley Creek and other sources for the uses authorized by this right" should "not exceed a total combined maximum diversion rate of 38.45 cfs from all sources.

Condition no. 11 – Whether the condition referring to the agreement between Buckeye and the Idaho Department of Fish and Game (Fish & Game) should expressly discuss future termination of the agreement.

We have conversed several times about these issues. The following are my conclusions about the issues, discussed in, what I perceive to be the order of their importance and linkage to other related issues.

Diversion Limits

I and other water right staff reviewed existing water rights held/claimed by Buckeye. Existing water rights describing Riley Creek as the water source authorize a total diversion rate

of 22.45 cfs. The additional diversion 16.0 cfs of water proposed by application to appropriate 36-8785 will increase the total to 38.45 cfs. Water rights held by Buckeye describing other sources of water are not expressly linked to diversions from Riley Creek.

IDWR understands that the Idaho Dept. of Commerce (Commerce) awarded a grant to Buckeye to construct conveyance systems that will replace water no longer available from other sources because of diminished spring flows. I was concerned that application no. 36-8785 was linked to these replacement water supplies, and that IDWR would be approving an additional demand on spring flows when the goal of the grant program is to reduce demands on the reduced spring flows. You provided me a copy of the agreement for the grant from Commerce. The agreement states that the "terms and conditions of this Contract are intended to provide mitigation to Water Right Numbers 36-7740, 36-7742, 36-8730, and 36-8728." If sufficient water is provided from Riley Creek under approved application no. 36-8785 to replace water authorized for diversion from other sources by water right nos. 36-7740, 36-7742, 36-8730, and 36-8728, Buckeye agrees "not to seek administration of water" under these water rights.

Water right no. 36-7742 authorizes diversion of 20 cfs from Billingsley Creek for fish propagation. Water right no. 36-8730 authorizes diversion of the same 20 cfs from Billingsley Creek for diversion to storage, wildlife storage, aesthetic storage, and recreation storage Both water rights authorize diversion and use of the same 20.0 cfs authorized by an earlier priority water right no. 36-18 for irrigation. The later in time non-irrigation rights are an additional use of the original 20.0 cfs authorized for irrigation.

Water right no. 36-7740 authorizes diversion of 6.50 cfs from Weatherby Springs. Water right no. 36-8728 authorizes diversion of 6.50 cfs from Weatherby Springs for diversion to storage, wildlife storage, aesthetic storage, and recreation storage. Both water rights authorize diversion and use of the same 20.0 cfs authorized for diversion for irrigation by an earlier priority water right no. 36-15, authorizing diversion of 6.50 cfs from Billingsley Creek for irrigation. The later in time non-irrigation rights are an additional use of the original 6.50 cfs authorized for irrigation.

The water rights listed in the two previous paragraphs are not linked to Riley Creek or Riley Creek water rights. Other Riley Creek water rights only limit total diversion from Riley Creek. As a result, in approving 36-8785, IDWR should only limit total diversion under the Riley Creek water rights. IDWR will place the following amended condition on the permit:

> Diversion and use of water under this right and all other rights diverted by the right holder from Riley Creek shall not exceed a total combined maximum diversion rate of 38.45 cfs.

Subordination

Recent delivery calls filed by surface water users have increased concerns about approval of new surface water rights that would create an expectation of delivery from future ground water rights. While the prospect of approval of new ground water rights may appear to be remote at the present time, an appropriation of 16 cfs is a significant new diversion of water.

Furthermore, the justification for the uses proposed by application no. 36-8785 diversion is inexact.

IDWR will subordinate a water permit issued for application no. 36-8785 to all uses other than those authorized by permit no. 36-8785. IDWR will also expressly recognize that permit no. 36-8785 is not subordinate to a future hydropower use. I propose the following condition language.

> This water right shall be junior and subordinate to other rights for the use of water, other than fish propagation, wildlife, recreation, aesthetic purposes, and hydropower in the State of Idaho that are initiated later in time than the priority date of this right and shall not give rise to any claim against any future rights for the use of water, other than fish propagation, wildlife, recreation, aesthetic uses, or hydropower within the State of Idaho initiated later in time than the priority of this right.

Measuring Device

The need for a measuring device is a direct result of diversion limits based on flows in Riley Creek at the point of diversion negotiated by Buckeye as part of the settlement agreement with Fish & Game. A measurement of the flow in Riley Creek would not be necessary at the location but for the need to determine flow in Riley Creek to subsequently determine diversion flow rates.

The watermaster must be able to measure and regulate water diverted. Regulation includes bypass of the agreed-to flows in Riley Creek.

You questioned whether Buckeye could gain access to property where the measuring device or rated section must be installed. Although access may be difficult, the bypass cannot be insured without measurement. The condition will remain on the permit, but will be amended as follows to allow for flexibility:

> Prior to diversion of water under this right, the right holder shall install and maintain a measuring device and lockable controlling works of a type acceptable to the Department as part of the diverting works. Additionally, the right holder, in coordination with the watermaster and the Department, shall identify a suitable location for a measuring device or rated section in Riley Creek that will measure the flows of Riley Creek to insure the bypass below the Conyer Ditch (LeMoyne Diversion) as described in the conditions of this permit. The right holder shall pay the costs of installing and maintaining the measuring device or rated section.

Reference to Agreement Provisions

The agreement between Buckeye and Fish & Game withdrew Fish & Game's protest if express conditions were included in the permit approval. One provision of the agreement stated that the settlement agreement would be void if the bypass condition was not included. In another

provision of the agreement, the parties stipulated that the following language "would be included as conditions of use of any permit and any license thereafter issued:"

> The diversion and use of water described in permit 36-8785 may be subject to additional conditions and limitations agreed to by the Idaho Department of Fish and Game and the right holder under separate agreement dated July 26, 2004, to which the Department is not a party and which may be enforceable by a court of law.
>
> If the separate agreement by the Idaho Department of Fish and Game and the Right holder dated July 26, 2004 is ever terminated, then the limitations set forth in section 2(B)(2) of that agreement shall no longer apply. Any modification or termination in this settlement agreement shall be in writing signed by an authorized representative of both parties. If a modification or termination agreement is made, the Idaho Department of Water Resources shall be provided a copy by the right holder.

After our last telephone discussion, we agreed that the first condition will be printed verbatim on the permit and the second condition quoted above will not be included as an express condition, but that IDWR should generally refer to the agreement as printed in the original agreement.

I also agreed to amend the bypass flow condition (Condition no. 7) so that it cross-references the agreement. I will add the following language to the end of Condition no. 7:

> In a written agreement, the right holder and the protestant agreed to the preceding diversion limitations based on flows in Riley Creek.

I will immediate ask staff to reissue permit no. 36-8785 based on this letter. Upon receipt of an amended permit, I expect you will withdraw your motion for reconsideration and request for a hearing.

Sincerely,

Gary Spackman

Cc: Regional office

BROCKWAY
ENGINEERING
P.L.L.C.

Hydraulics
Hydrology
Water Resources

CHARLES E. BROCKWAY, PH.D., P.E.

CHARLES G. BROCKWAY, PH.D., P.E.

2016 NORTH WASHINGTON STREET • SUITE 4

TWIN FALLS, IDAHO 83301

208•736•8543

FAX: 736•8506

RECEIVED
JAN 03 2005
DEPARTMENT OF WATER RESOURCES

RECEIVED
DEC 30 2004
Department of Water Resources
Southern Region

December 29, 2004

Idaho Department of Water Resources
Attn.: Allen Merritt
1341 Fillmore Street, Suite 200
Twin Falls, ID 83301

Re: Buckeye Farms - Permit 36-08785

Dear Allen:

I am enclosing additional information relative to the need for and beneficial use of the additional 16 cfs applied for from Riley Creek under application for permit 36-08785 or a reduced flow of 8 cfs as per the agreement between Buckeye Farms Inc. and IDFG.

The water supply for the irrigation system/pond system on Buckeye Farms is derived from the Curren Ditch through the South Pipeline and from the Buckeye Ditch and Hunt Ditch. Water available under the established rights has been reduced because of declining spring flows and the purpose of this application is to enhance the water availability to the northern sections of Buckeye Farms served by the South Pipe and the remainder of the pond system.

The attached NAIP 2003 aerial photo shows the existing pond and irrigation system and the proposed pumping plant and pipeline from the Hunt Ditch to Pond #1. There are 57 ponds or impoundments in the Buckeye Farms transmission and distribution system as shown on the aerial photo. These ponds comprise some 148.7 acres, and an estimated 835.6 acre feet of storage if there is ample water to fill all ponds. In addition there are some 23,500 feet of ditches connecting the ponds and irrigated areas. Because of declining flows, some of the ponds have not been utilized in recent years.

Use of an additional 16 cfs from the Hunt Ditch into Pond 1 will allow the use of water from the South Pipe to be utilized in parts of the pond system which have been extremely short of water. Also, the additional water will allow more flexibility in use of existing sources such as the Buckeye Ditch and allow more efficient distribution within the entire system.

A determination of water requirements and beneficial use for a combined irrigation/aesthetic-recreation complex such as Buckeye Farms is difficult since there are no criteria or guidelines for a determination. For a recreation/aesthetic/wildlife and fish propagation pond system, a rule of thumb which has been used is that the flow through a pond or pond system should be sufficient to provide a turnover time of 24-48 hours. This turnover time should be lower in areas where summertime temperatures are above 90°F.

Water rights for wildlife, recreation and aesthetics and fish propagation owned by Buckeye Farms include approximately 66 cfs under eight (8) water rights as shown on the enclosed IDWR data base printout. Using the above rule of thumb of a 48 hour turnover for all ponds, the required flow would be 211 cfs (417.8 /1.98). This discharge far exceeds the available water if all water rights are delivered which has not been possible. The additional 16 cfs contemplated in the permit will provide enhanced flows in the South Pipe service area and throughout the system.

Although the lack of criteria and complexity of the system makes a rigorous analysis of beneficial use on individual components of the system difficult, it is sufficient to say that the additional 16 cfs can be beneficially used to make up for declines in water availability due to reduced spring flows.

Sincerely,

Charles E. Brockway, P.E.

Enclosure: Aerial photo
Buckeye Farms water right summary sheet

cc: John Simpson

BUCKEYE FARMS

December 27, 2004

Irrigated Areas and Appicable Water Rights

					TYPE	Water Right	Water Right	Water Right	Water Right	Water Right	Water Right	Water Right	Permit	Permit	Permit	Permit	Permit	Permit	Permit	Permit	Permit
					RIGHT #	36-1	36-2	36-3H	36-15	36-18	36-8424	36-11146	36-7739	36-7740	36-7741	36-7742	36-8335	36-8728	36-8729	36-8730	36-8785
					SOURCE	Riley Creek	Riley Creek	Billingsley Creek	Weatherby Springs	Billingsley Creek	Groundwater	Groundwater	Unknown	Weatherby Springs	Riley Creek	Billingsley Creek	Billingsley Creek	Weatherby Springs	Riley Creek	Billingsley Creek	Riley Creek
					CURRENT OWNER	Buckeye Farms	Buckeye Farms	Buckeye Farms	Buckeye Farms	Buckeye Farms	Buckeye Farms	Buckeye Farms	Buckeye Farms	Buckeye Farms	Buckeye Farms	Buckeye Farms	Buckeye Farms	Buckeye Farms	Buckeye Farms	Buckeye Farms	Buckeye Farms
					PRIORITY DATE	5/1/1883	10/1/1908	9/10/1884	3/8/1902	4/1/1917	5/24/1989	3/9/1971	8/1/1977	8/1/1977	8/1/1977	8/1/1977	9/24/1987	9/24/1987	9/24/1987	9/24/1987	10/29/1998
					BASIS	Decreed	Decreed	Decreed	Decreed	Decreed	License	Decreed									
					USE	Irrigation	Irrigation	Irrigation	Irrigation	Irrigation	Domestic	Domestic	Fish Propagation	Fish Propagation	Fish Propagation	Fish Propagation	Wildlife Recreation Asthetic	Wildlife Recreation Asthetic	Wildlife Recreation Asthetic	Wildlife Recreation Asthetic	Wildlife Fish Propagation Recreation Asthetic
					IRRIGATION DIVERSION	12cfs	10.45 cfs	11.9 cfs	6.5 cfs	20 cfs	.08 cfs	.04 cfs	0	0	0	0	0	0	0	0	0
					STOCKWATER DIVERSION	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
					Total Diversion Rate(CFS)	12 cfs	10.45 cfs	11.9 cfs	6.5 cfs	20 cfs	.08 cfs	.04 cfs	12 cfs	10 cfs	24 cfs	20 cfs	12 cfs	6.5 cfs	24 cfs	20 cfs	16 cfs
					VOLUME						1.6 afa										
					POINT OF DIVERSION	Riley Creek	Riley Creek	Billingsley Creek	Weatherby Springs	Billingsley Creek	Groundwater	Groundwater		Weatherby Springs	Riley Creek	Billingsley Creek	Billingsley Creek	Weatherby Springs	Riley Creek	Billingsley Creek	Riley Creek
T	R	Sec	QQ	Irrigated																	
7S	13E	23	NESW						32	32											
			NWSW						35	35											
			SWSW						40	40											
			SESW						34	34											
7S	13E	26	NENW						10	10											
			NWNW						22	22											
			SENW						21	21											
			NESW						19	19											
			SESW						16	16											
			NWSE						6	6											
			SWSE						22	22											
			SESE						12	12											
07S	13E	27	SWSW			32	32	1													
			SESW			40	40														
			SWSE			40	40														
			SESE			40	40														
7S	13E	28	SWSE			40	40	40													
			SESE			35	35	35													
7S	13E	33	NENE			40	40	40													
			NWNE			36	36	36													
			SWNE			26	26	26													
			SENE			10	10	10													
			NENW			6	6	6													
			SENW			4	4	4													
			NESW			1	1	1													
			NESE			6	6	6													
			NWSE			24	24	24													
			SWSE			5	5	5													
			SESE			29	29	29													
7S	13E	34	NENE			40	40														
			NWNE			38	38														
			SWNE			40	40														
			SENE			38	38														
			NENW			40	40														
			NWNW			34	34	2													
			SWNW			31	31	15													
			SENW			39	39														
			NESW			7	7														
			NWSW			10	10	10													
			NESE			13	13														
			NWSE			17	17														
			SWSE																		
			SESE																		
7S	13E	35	NENE						8	8											
			NWNE						9	9											
			SWNE						38	38											
			SENE						9	9											
			NENW						15	15											
			NWNW						2	2											
			SENW						37	37											
			NESW						40	40											
			NESE						19	19											
			NWSE						37	37											
					TOTALS	761	761	290	483	483	0	0	0	0	0	0	0	0	0	0	0

36-1 - Use of this right with Water Right Nos 36-00002 & 36-0003H is limited to a total combined diversion rate of 28.55 cfs

36-2 - Use of this right with Water Right Nos 36-00001 & 36-0003H is limited to a total combined diversion rate of 28.55 cfs

36-3H - Use of this right with Water Right Nos 36-00001 and 3600002 is limited to a total combines diversion rate of 28.55 cfs

36-15 - Use of this right with Right No 36-00018 is limited to the irrigation of a combiened total of 483 acres in a single irrigation season

36-18 - Use of this right with Right No 36-00015 is limited to the irrigation of a combined total of 483 acres in a single irrigation season

36-15 - See Water Right Transfer # 66354

KAKL

RECEIVED
DEC 14 2004
DEPARTMENT OF
WATER RESOURCES

John K. Simpson, Bar No. 4242
Shelley M. Davis, Bar. No. 6788
Barker Rosholt & Simpson, LLP
205 N. 10th Street, Ste. 520
Boise, ID 83702
(208) 336-0700
(208) 344-6034 Facsimile

Attorneys for Buckeye Farms Inc.

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

In Re: Permit No. 36-8785	)	
	)	
Buckeye Farms Inc.	)	
	)	MOTION FOR RECONSIDERATION /
	)	REQUEST FOR HEARING
	)	

INTRODUCTION

COMES NOW Buckeye Farms, by and through its attorneys of record, Barker, Rosholt & Simpson, LLP, and hereby moves the Idaho Department of Water Resources (IDWR) to reconsider the Permit to Appropriate Water issued to Buckeye Farms Inc. November 24, 2004. Buckeye Farms also requests a hearing before IDWR pursuant to I.C. §§ 42-204(4) and 42-1701A(3). Specifically, for the following reasons, Buckeye

Farms requests that the conditions of approval listed in the permit as numbers four (4), six (6), nine (9), and eleven (11) be eliminated or revised.

ARGUMENT

The State of Idaho Department of Water Resources issued a Permit to Appropriate Water to Buckeye Farms on November 24, 2004. Prior to issuance of the Permit, Buckeye Farms and the Idaho Department of Fish and Game (IDFG), the protestant, , entered into a settlement agreement. The Settlement agreement set forth the conditions that the parties felt would ensure coordinated management between the parties and eliminate potential adverse impacts on fish and wildlife resources in Riley Creek. As the Permit now stands, it contains fifteen (15) conditions of approval, four of which Buckeye Farms objects to and requests that IDWR reconsider..

Buckeye Farms objects to condition of approval number four (4) which states:

> The rate of diversion for fish propagation, wildlife, recreation, and aesthetic uses authorized by this right shall be junior and subordinate to all other rights for the use of water, other than fish propagation, wildlife, recreation, or aesthetic purposes in the State of Idaho that are initiated later in time than the priority of this right and shall not give rise to any claim against any future rights for the use of water, other than fish propagation, wildlife, recreation, or aesthetic uses within the State of Idaho initiated later in time than the priority of this right.

This condition assumes that the water that has been issued under the permit will not be put to beneficial use. However, Brockway Engineering provided a report to IDWR demonstrating that the water will be put to beneficial use. The evidence was provided to the department prior to the issuance of the permit, and for that reason, condition of approval number four (4) is inappropriate in this permit, and should be eliminated. Condition number four (4) also violates the prior appropriation doctrine and is contrary to

Idaho law. There is no basis in Idaho law for IDWR to subordinate "fish propagation, wildlife, recreation, or aesthetic" to other future water rights.

Buckeye Farms objects to condition of approval number six (6) which states:

> Prior to diversion of water under this right, the right holder shall install and maintain a measuring device and lockable controlling works of a type acceptable to the Department as part of the diverting works. Additionally to facilitate watermaster regulation of this right, the right holder shall install and maintain a measuring device or rated section on Riley Creek immediately downstream from the Conyer Ditch (Le Moyne Diversion) prior to diversion of water under this right. The location and design of the measuring device or rated section shall be subject to the approval of the Director and watermaster of Water District No. 36A.

Buckeye Farms objects to the portion of the condition that requires it to install and maintain a measuring device or rated section downstream from the Buckeye Farms point of diversion. There is no explanation as to why Buckeye Farms should be required to be responsible for a public measuring device downstream from its diversion, and Buckeye objects to the inclusion of this requirement in condition number six (6). Buckeye Farms requests that condition number six (6) be revised to eliminate that portion of the condition that requires it to install a measuring device downstream from its point of diversion on Riley Creek.

Buckeye Farms objects to the condition of approval number nine (9) which states:

> Diversion and use of water under this right and all other rights diverted by the right holder from Riley Creek and other sources for the uses authorized by this right shall not exceed a total combined maximum diversion rate of 38.45 cfs from all sources.

Buckeye Farms objects to this condition to the extent that it purports to impose a limit on the diversion rate acquired by Buckeye farms from "other rights" and from "all sources." Attempts to limit and/or condition existing water rights decreed in the SRBA constitutes action beyond the authority of the Department. Buckeye Farms requests that the

condition be amended to eliminate references to rights acquired on sources other than the diversion at Riley Creek authorized under this Permit.

Lastly, Buckeye Farms objects to the inclusion of condition number eleven (11) in its entirety, and requests that it be removed from the Permit. Condition number eleven (11) states that:

> The diversion and use of water described in this right may be subject to additional conditions and limitations agreed to by the protestant(s) and the right holder under separate agreement to which the Department is not a party and which may be enforceable by a court of law.

Condition number eleven (11) is inappropriate in the Permit as the parties agreed to the inclusion of condition number seven (7) in order to satisfy IDFG's objection. In exchange for the inclusion of condition seven (7) the IDFG agreed to withdraw its objection. It is inappropriate for the Department to include condition number eleven (11) as some sort of reservation of rights for IDFG where the Department was not a party to the dispute or the settlement resolving the dispute. Moreover, the parties retain their rights vis-a-vis each other under the agreement regardless of the language on the water right permit. Accordingly, Buckeye Farms requests that the Department eliminate condition number eleven (11) from the Permit.

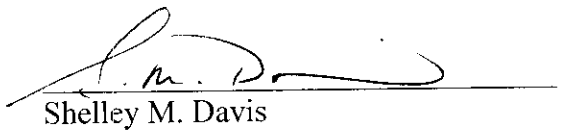
CONCLUSION

For the foregoing reasons Buckeye Farms requests that the Idaho Department of Water Resources revise conditions numbered six (6), and nine (9), and eliminate conditions numbered four (4), and eleven (11) from permit number 36-8785 issued November 24, 2004. Additionally, Buckeye Farms respectfully requests a hearing on this

Motion. Furthermore, Buckeye Farms requests that a status conference be scheduled in this matter.

Dated this 10th day of December, 2004.

BARKER ROSHOLT & SIMPSON LLP



Shelley M. Davis

Attorneys for Buckeye Farms Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of December, 2004, I served a true and correct copy of the foregoing *Motion for Reconsideration* on the following by U.S. Mail, postage prepaid:

Original to:

Karl J. Dreher, Director
Idaho Department of Water Resources
322 East Front Street
Boise, ID 83720-0098

Shelley M. Davis



POND#	POND NAME	ACRES	DEPTH	VOLUME
1		5.0	3.0	15.0
2		4.5	3.0	13.5
3		1.9	3.0	5.7
4		6.9	3.0	20.7
5		0.1	3.0	0.3
6		2.5	3.0	7.5
7		0.7	3.0	2.1
8		0.2	3.0	0.6
9		2.3	3.0	6.9
10		0.7	3.0	2.1
11		4.2	3.0	12.6
12,13		1.3	3.0	3.9
15		1.8	3.0	5.4
16		2.1	3.0	6.3
17		1.4	3.0	4.2
19		4.0	3.0	12.0
20	LOWER	13.8	14	193.2
21	HEART	3.1	3	9.3
22	CARP	5.6	14	78.4
23		0.4	3	1.2
24		1	3	3.0
25		4.3	3	12.9
26	DITZ	13.7	14	191.8
27	JANSS	5.9	8	47.2
28	WEST FEED LOT	4.2	3	12.6
29	BLUE GILL	1.8	3	5.4
30		0.6	3	1.8
31		1.3	3	3.9
32		1.2	3	3.6
33	EAST SWAMP	6.8	3	20.4
34	WEST SWAMP	9.9	3	29.7
35	MIDDLE RIVER	1.5	3	4.5
36	EAST GARDEN	3.5	3	10.5
37	MIDDLE GARDEN	1.7	3	5.1
38	WEST GARDEN	5	3	15
39		0.7	3	2.1
40		0.3	3	0.9
41		0.7	3	2.1
42		0.6	3	1.8
43		0.8	3	2.4
44		1.8	3	5.4
45		0.5	3	1.5
46		1.2	3	3.6
47		3.6	3	10.8
48		0.1	3	0.3
49		1	3	3
50		1.5	3	4.5
51		0.4	3	1.2
52		1.8	3	5.4
53		0.6	3	1.8
54		0.8	3	2.4
55		0.7	3	2.1
56		1.2	3	3.6
57		4.2	3	12.6
		147.4		**835.8**

Legend

- APPROX. PROPERTY BOUNDARY
- PUMP STATION
- DIVERSION
- PONDS
- MAINLINES
- SECTION LINES
- LOWER STATION IRRIGATION
- UPPER STATION IRRIGATION
- PROPOSED PIPELINE
- DITCHES TOTAL = 23,524 FT
- T07S R13E QQ
- T08S R13E QQ

BUCKEYE FARMS SYSTEM AND PROPOSED HUNT DITCH PUMPING PLANT
NAIP 2003 AERIAL PHOTO

N

AY ENGINEERING, PLLC.
28, 2004

State of Idaho
DEPARTMENT OF WATER RESOURCES
322 East Front Street, P.O. Box 83720, Boise, ID 83720-0098
Phone: (208) 287-4800 Fax: (208) 287-6700 Web Site: www.idwr.idaho.gov.

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

November 29, 2004

BUCKEYE FARMS INC
18335 U S HWY 30
HAGERMAN ID 83332

RE: Permit No. 36-8785

Permit Approval Notice

Dear Permit Holder:

The Department of Water Resources has issued the enclosed permit authorizing you to establish a new water right. Please be sure to thoroughly review the conditions of approval and remarks listed on your permit.

The permit 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 by the Department unless a party petitions for reconsideration or files an exception and/or brief within fourteen (14) days of the service date as described in the enclosed information sheet.

As a permit owner you must commence the excavation or construction of the diverting works within one year of the date the permit was issued, and you must proceed diligently until the project is completed. The date shown under condition no. 1 is the date when the project must be completed.

The Department will send you a 'Proof Due Notice' approximately 60 days prior to the above referenced date requesting you to file either a Proof of Beneficial Use form or a Request for Extension of Time form.

Please note that a separate stream channel alteration permit must be obtained from the Department prior to any activity in the stream channel other than construction or maintenance of the diversion structure for your water right(s). Applications for stream channel alteration permits must be filed a least sixty days prior to the commencement of work in the stream.

Also, please note that water right owners are required to report any change of water right ownership and/or 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 the Department's homepage on the Internet to obtain the proper forms and instructions.

If you have any questions, please contact me at 208-287-4947.

Sincerely,

Shelley W. Keen

Shelley W. Keen
Water Rights Supervisor

SWK:klt

Enclosure(s)

CERTIFICATE OF SERVICE

I hereby certify that on November 29, 2004 I mailed a true and correct copy, postage prepaid, of the foregoing PRELIMINARY ORDER(Approved Permit) to the person(s) listed below:

RE: WATER RIGHT NO. **36-8785**

BUCKEYE FARMS INC
18335 U S HWY 30
HAGERMAN ID 83332

Kari Lynn Townsend
Secretary

EXPLANATORY INFORMATION
TO ACCOMPANY A
PRELIMINARY ORDER

(To be used in connection with actions when a hearing was not held)

(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 Water Resource Board is otherwise provided by statute, any person aggrieved by any final 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.

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 IDAPA Rules 37.01.01302 and 37.01.01303 (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.

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.

Comment Report

36-8785

1. amerritt 8/24/2004 recommendation
Comment: This application on its face is for additional flow from Riley Creek to enhance the wildlife, recreation, aesthetic and fish propagation in existing facilities. No new facilities are contemplated to be constructed. The application was advertised and protested. Through a series of conferences and negotiations the protests were either dismissed or resolved by agreement. The file contains an agreement limiting the time when water can be diverted from Riley Creek.

Analysis of flow data submitted during conferences shows water is available during certain times of the year but is less than 45 cfs during a portion of the year. The flow data is measured below the Conyer (LeMoyne) ditch. The agreement is based on flow at the Hunt ditch. It is not know what -at- means since it could be before water has been diverted to the Hunt ditch or after water has been diverted for other rights through the Hunt ditch. Review of diversions on the creek finds that the Conyer Ditch is immediately below the Hunt ditch. The Conyer Ditch has rights for 40 cfs going to LeMoyne. In light of the LeMoyne rights and measurements of the Creek below this diversion it appears appropriate to be the basis for conditioning when to take water. Otherwise the condition would injure the LeMoyne diversion right or dry up the creek which is not in the local public interest. I have drafted a condition of approval incorporating the flow trigger amounts with a more logic place in the creek where it should be measured.

No additional information was provided to justify the flows requested. I recommend that the right be subordinated since it is very hard to quantify justification for wildlife, recreation, aesthetic uses; and since this permit is for enhancement. This issue was presented to the applicant to allow submission of additional information in the letter dated 3-29-04 to applicant attorney but it was never responded to. I recommend approval with conditions as drafted in draft permit.

2. amerritt 11/8/2004 revised recommendation
Comment: I have revised the draft based on comments from Shelly Keen. I recommend approval with conditions as drafted in the revision. The applicant through his consultant has been given time to submit additional information to justify flow rates. Although there has been an indication that this information is going to be submitted, to date the region office has not been provided this information. I am forwarding this application to the state office as is. I have created a POD in the permit layer for SDE using a WIMIS point for the Hunt Ditch. NO SDE has been done for the POU permit layer since it should match what will be licensed for 36-7741 and 36-8729 but I cannot find those shapes.

3. kwalker 11/22/2004 Permit Review
Comment: Recommend approval as conditioned by region. Conditions were rearranged but not changed from regional recommendation.

Merritt, Allen

From: Merritt, Allen
Sent: Monday, October 25, 2004 1:28 PM
To: Chuck Sr. Brockway (E-mail)
Cc: John Simpson (E-mail); Keen, Shelley
Subject: Buckeye Farms Application 36-8785

Chuck,

Today I've been asked by the state office about the status of application 36-8785 in the name of Buckeye Farms, Inc.

As you may recall at the time the protest of the F&G was being resolved around late August or early September I circulated a draft approval that included a condition about measurement of flows on Riley Creek that would trigger diversion of the permit that clarified the protest withdrawal. Included in the draft was a subordination condition. At that time Mr. Simpson and you requested additional time to submit information that would justify the requested flows for the uses of Wildlife, Recreation, Aesthetic and Fish Propagation to hopefully overcome the subordination condition I was proposing. To date our office has not received any additional information.

Since it appears sufficient time has gone by, please let me know as soon as possible if you still intend to submit something. I would like to forward the file to the state office by weeks end.

Thanks.

Allen

Merritt, Allen

From: Saxton, Glen
Sent: Monday, October 25, 2004 11:22 AM
To: Dreher, Karl
Cc: Merritt, Allen; Peppersack, Jeff
Subject: FW: 36-8785 status (Buckeye Farms)

Karl,

The messages below relate to 1of the 2 matters you gave me today to determine the status. It looks like the Buckeye matter is being slowed down by Simpson and Brockway themselves, not the department, since we are waiting from information from Brockway.

Allen,

Please send a reminder message or letter to Brockway advising that we are waiting for information from him to further consider the Buckeye application and send a copy to Simpson. Perhaps they have forgotten whose court the ball is now in. lgs

-----Original Message-----
From: Peppersack, Jeff
Sent: Monday, October 25, 2004 11:11 AM
To: Saxton, Glen
Subject: FW: 36-8785 status (Buckeye Farms)

Glen, here is the status of the Buckeye Farm app. from Allen.

Jeff

-----Original Message-----
From: Merritt, Allen
Sent: Monday, October 25, 2004 10:00 AM
To: Peppersack, Jeff
Subject: RE: 36-8785 status (Buckeye Farms)

Yes I still have this application. As you may recall the protest was finally resolved in late August but the stipulation was somewhat confusing about when water could be diverted. To resolve this confusion I drafted an approval document with conditions and routed it to the parties. The draft was ok with them regarding the condition that resolved the confusion however Simpson did not like the subordination condition. He asked that the permit approval be held until Brockway could submit some sort of justification for the wildlife, etc uses. I understood it would be a matter of 30 days or so. To date I have not received anything from Brockway.

Allen

-----Original Message-----
From: Peppersack, Jeff
Sent: Monday, October 25, 2004 9:50 AM
To: Merritt, Allen
Subject: 36-8785 status (Buckeye Farms)

Allen,
Glen needs to provide Karl a status update for this application. I see from the file inventory that you have the file. Can you provide a status update please?

Thanks,
Jeff

Merritt, Allen

From: Keen, Shelley
Sent: Friday, August 27, 2004 9:27 AM
To: Merritt, Allen
Subject: Draft 36-8785 Buckeye Farms.RTF



Draft 36-8785
Buckeye Farms.rt...

Allen,

My comments and suggestions are shown on the draft permit. I've tried to tighten up a few conditions.

Also, as a general rule, I always try to refer to "right holder" instead of "applicant" and "right" instead of "permit". If we don't, then we have to change all the conditions when we issue the license. Also, I tried to use "shall" instead of "may" per Glen's preference.

Do you think it prudent to further define "immediately downstream", or is making the location subject to IDWR approval sufficient?

Call me to discuss any of this.

Shelley

State of Idaho
Department of Water Resources

Permit to Appropriate Water

NO. 36-08785

CONDITIONS OF APPROVAL

1. Proof of application of water to beneficial use shall be submitted on or before .
2. Subject to all prior water rights.
3. Water is diverted through the Hunt Ditch.
4. The rate of diversion for fish propagation, wildlife, recreation, and aesthetic uses authorized by this right shall be junior and subordinate to all other rights for the use of water, other than fish propagation, wildlife, recreation, or aesthetic purposes, within the State of Idaho that are initiated later in time than the priority of this right and shall not give rise to any claim against any future rights for the use of water, other than fish propagation, wildlife, recreation, or aesthetic uses within the State of Idaho initiated later in time than the priority of this permit.
5. Total diversion from Riley Creek may be limited when use of this permit is combined with other rights from Riley Creek and other sources. Specifically total diversion from all sources may be limited to 38.45 cfs (16 + 22.45). **Allen, I think this condition is problematic. It will be hard to enforce without specifying which rights we really mean. If we can't identify them by number, we should at least indicate that we mean rights for the same uses as listed in this right. Try something like:**

Diversion and use of water under this right and all other rights diverted by the right holder from Riley Creek and other sources for the uses authorized by this right shall not exceed a total combined maximum diversion rate of 38.45 cfs from all sources.

6. Use of water under this right shall be non-consumptive.
7. This right does not authorize construction of new fish propagation facilities or expansion or enlargement of wildlife, recreation or aesthetic ponds or features not already authorized under existing rights held by the right holder. (See rights 36-7741 and 36-8729)
8. The Director retains jurisdiction to require a bypass flow for maintenance of fish, wildlife, riparian and aquatic habitat.
9. The right holder shall not divert water at a rate exceeding what is reasonably necessary for the beneficial use authorized by this right.
10. The diversion and use of water described in this right may be subject to additional conditions and limitations agreed to by the protestant(s) and the right holder under separate agreement to which the Department is not a party and which may be enforceable by a court of law.
11. Any license issued by IDWR pursuant to the right 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.
12. Should the use of the water on this right reduce the quality of water available to prior water rights and make it unusable to satisfy the prior appropriations, the right holder shall cease diversion under this right.
13. Prior to diversion of water under this right, the right holder shall install and maintain a measuring device and lockable controlling works of a type acceptable to the Department as part of the diverting works.
14. The right holder shall record the quantity of water diverted and annually report diversions of water and/or other pertinent hydrologic and system information as required by Section 42-701, Idaho Code. **Delete this condition if the watermaster will be actively regulating and recording deliveries.**
15. From March 16 through September 15 of each year, diversion under this right shall not exceed 8

cfs when the flow in Riley Creek immediately downstream of the Conyer Ditch (Le Moyne Diversion) is equal to or less than 45 cfs. When the flow in Riley Creek is greater than 45 cfs immediately downstream of the Conyer Ditch (Le Moyne Diversion) during the period from March 16 through September 15, diversion under this right shall not exceed 8 cfs plus the amount by which the flow in Riley Creek exceeds 45 cfs, up to a maximum of 16 cfs.

State of Idaho
Department of Water Resources

Permit to Appropriate Water

NO. 36-08785

New Condition.
To facilitate watermaster regulation of this right, the right holder shall install and maintain a measuring device or rated section on Riley Creek immediately downstream from the Conyer Ditch (Le Moyne Diversion) prior to diversion of water under this right. The location and design of the measuring device or rated section shall be subject to the approval of the Director and the watermaster of Water District No. 36A.

16. Use of water under this right will be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 36A.

This permit is issued pursuant to the provisions of Section 42-204, Idaho Code. Witness the signature of the Director, affixed at Boise, this _____ day of _____, 20_____.

_____
KARL J DREHER, Director

RECEIVED
AUG 2 6 2004
Department of Water Resources
Southern Region

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
LAWRENCE G. WASDEN

August 25, 2004

VIA U.S. MAIL AND FACSIMILE
(208) 736-3037

Mr. Allen D. Merritt
Idaho Department of Water Resources
1341 Fillmore Street, Suite 200
Twin Falls, ID 83301-3380

Re: Voice Mail Regarding SETTLEMENT AGREEMENT OF A PROTEST TO WATER RIGHTS BETWEEN THE IDAHO DEPARTMENT OF FISH AND GAME AND BUCKEYE FARMS INC.

Dear Allen:

I received your voice mail question regarding the SETTLEMENT AGREEMENT OF A PROTEST TO WATER RIGHTS BETWEEN THE IDAHO DEPARTMENT OF FISH AND GAME AND BUCKEYE FARMS INC. I concluded that Mr. John Simpson should join me in any response to your question. I understand that he is out of the office today and that he will be back in the office on Thursday, August 26, 2004. I will contact him, and then we will call you to respond to your question.

Sincerely,

David J. Barber

DAVID J. BARBER
Deputy Attorney General

DJB/ov
Encl.

cc: John Simpson (via facsimile 344-6034)
Dave Parrish
Cindy Robertson

Natural Resources Division
P.O. Box 83720, Boise, Idaho 83720-0010
Telephone: (208) 334-2400, FAX: (208) 334-2690
Located at 700 W. Jefferson Street, Suite 210

Merritt, Allen

From: Merritt, Allen
Sent: Wednesday, August 25, 2004 10:35 AM
To: David Barber (E-mail); Dave Parrish (E-mail); John Simpson (E-mail)
Cc: Keen, Shelley
Subject: Buckeye Farms application 36-8785

Gentlemen

I have drafted the permit approval and ready to send to the SO for approval. Please look condition #15 over since it was recently brought to my attention that the Conyer ditch diverts downstream from the Hunt ditch and I have struggled with understanding your agreement in light of this. If you would like to call me tomorrow and discuss this further I will be available; otherwise I am prepared to forward my draft approval to the state office by weeks end.

Allen


Memo File 36-8785.RTF


Draft 36-8785 Euckeye Farms.RT...

Merritt, Allen

From: John K Simpson [jks@idahowaters.com]
Sent: Tuesday, August 24, 2004 9:53 AM
To: Allen Merritt
Cc: Brian Barsotti
Subject: Riley Creek Application

Allen,

It appears now that the Department has all the information necessary to evaluate the application. As you know, this application is the basis for Buckeye's mitigation proposal in the ESPA process. The Department of Commerce granted Buckeye's application with the condition that Buckeye expend the first $70,000 on the project. It would not be prudent to sign the contract without first knowing that there will be a water supply available for the mitigation project. Therefore, we are awaiting the Department's review and approval prior to signing the contract. The Commerce Department requested that Buckeye return the contract within 30 days, which runs the second week in September.

If you need additional information to expedite the process, please let me know. Jay Engstrom with the Commerce Department is our contact on the mitigation project.

Thanks John

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 20, 2004

ATTN DAN YORE
BUCKEYE FARMS INC
18335 US HWY 30
HAGERMAN ID 83332

DAVID B. SHAW
ERO RESOURCES CORP
1106 NORTH COLE RD-STE# C
BOISE ID 83704-8661

Re: Application for Permit: 36-8785

Gentlemen:

This office acknowledges receipt of the Settlement Agreement regarding the above referenced application.

Since the issue of the protest has been resolved, 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 the protestants unless information is requested; they have been so informed by copy of this letter.

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
cc:

DAVID BARBER
OFFICE OF ATTORNEY GENERAL
PO BOX 83720
BOISE ID 83720-0010

DAVID PARRISH
ID DEPT FISH & GAME
PO BOX 428
JEROME ID 83338

JOHN K. SIMPSON
BARKER ROSHOLT & SIMPSON LLP
PO BOX 2139
BOISE ID 83701-2139

RECEIVED
AUG 19 2004
Department of Water Resources
Southern Region

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
LAWRENCE G. WASDEN

August 18, 2004

Mr. Allen D. Merritt
Idaho Department of Water Resources
1341 Fillmore Street, Suite 200
Twin Falls, ID 83301-3380

Re: Buckeye Farms Application No. 36-08785.

Dear Allen:

Enclosed for your files is an original of the SETTLEMENT AGREEMENT OF A PROTEST TO WATER RIGHTS BETWEEN THE IDAHO DEPARTMENT OF FISH AND GAME AND BUCKEYE FARMS INC. Please file this document in the above application file and proceed to process application so that a permit may be issued as soon as possible. Thank you for your patience in this matter.

Sincerely,

DAVID J. BARBER
Deputy Attorney General

DJB/ov
Encl.

cc: John Simpson (w/original enclosure)
Dave Parrish (w/copy enclosure)
Cindy Robertson (w/copy enclosure)
Dallas Burkhalter (w/original enclosure)

Natural Resources Division
P.O. Box 83720. Boise, Idaho 83720-0010
Telephone: (208) 334-2400, FAX: (208) 334-2690
Located at 700 W. Jefferson Street, Suite 210

SETTLEMENT AGREEMENT OF A PROTEST TO WATER RIGHTS BETWEEN THE IDAHO DEPARTMENT OF FISH AND GAME AND BUCKEYE FARMS INC.

THIS SETTLEMENT AGREEMENT is entered into between the Idaho Department of Fish and Game and Buckeye Farms, Inc. and is made in reference to the following facts:

RECITALS OF FACTS

A. Buckeye Farms, Inc., an Idaho Corporation, filed application for Permit No. 36-8785 to divert at the Hunt Ditch Diversion the waters of Riley Creek, tributary to the Snake River.

B. The Idaho Department of Fish and Game filed a protest to the approval of application for Permit No. 36-8785 because of the potential adverse impacts on fish and wildlife resources in Riley Creek.

C. The purpose of this settlement agreement is to resolve in an amicable manner the protest by the Idaho Department of Fish and Game.

IN CONSIDERATION OF THE PROMISES HEREINAFTER STATED, THE PARTIES AGREE AS FOLLOWS:

1. Definitions

A. The term "Idaho Department of Fish and Game" or the acronym "IDF&G," means the State of Idaho Department of Fish and Game, Magic Valley Region, 868 E. Main St., P.O. Box 428, Jerome, Idaho, 83308-0428, by and through its authorized representatives.

B. The term "applicant" means Buckeye Farms, Inc., 18335 U.S. Hwy. 30, Hagerman, ID 83332, by and through its authorized representatives, or any successor or assign.

RECEIVED
AUG 19 2004
Department of Water Resources
Southern Region

2. Resolution of Protests

A. The IDF&G conditionally withdraws its protest to the approval of application for Permit No. 36-8785, provided however, that this withdrawal shall be void if the Idaho Department of Water Resources fails to include the provision provided in subdivision (B) of this section as a condition of any permit issued on application for Permit No. 36-8785.

B. The applicant agrees to the following:

1. The applicant would not file a protest to an application for permit by the IDF&G for the diversion of up to 5 c.f.s. of water into the West Pond. The source would be spills from the Big Bend ditch. The beneficial use would be for fish and wildlife habitat.

2. The applicant would limit its diversions as follows:

   i. During the period from September 16th of each year to March 15th of the following year, the applicant may divert up to 16 c.f.s.

   ii. During the period from March 16th of each year to September 15th of the year, applicant may only divert 8 c.f.s. when the flow in Riley Creek at the Hunt Ditch Diversion is equal to, or less than 45 c.f.s. When the flow in Riley Creek at the Hunt Ditch Diversion is greater than 45 c.f.s., Buckeye may divert 8 c.f.s. and any amount in excess of 45 c.f.s. up to a total of 16 c.f.s.

3. Where feasible and in the best interests of the parties, the applicant and IDF&G will manage their respective water rights in a coordinated fashion to provide the water that Buckeye needs for its operations and to assure a viable fish population in Riley Creek.

C. The IDF&G and applicant request the approval of application for Permit No. 36-8785 with the following conditions:

1. The limitations set forth in section 2(B)(2) shall be included as conditions of use of any permit and any license thereafter issued, subject to such limitations that the Idaho Department of Water Resources may impose at the time of licensing.

2. The following provisions would be included as conditions of use of any permit and any license thereafter issued:

> The diversion and use of water described in permit 36-8785 may be subject to additional conditions and limitations agreed to by the Idaho Department of Fish and Game and the right holder under separate agreement dated July 26, 2004, to which the Department is not a party and which may be enforceable by a court of law.
>
> If the separate agreement by the Idaho Department of Fish and Game and the right holder dated July 26, 2004 is ever terminated, then the limitations set forth in section 2(B)(2) of that agreement shall no longer apply. Any modification or termination in this settlement agreement shall be in writing signed by an authorized representative of both parties. If a modification or termination agreement is made, the Idaho Department of Water Resources shall be provided a copy by the right holder.

3. Term

A. This settlement agreement shall take effect when executed by both parties hereto. This settlement agreement may be amended by mutual written consent of the parties.

B. In the event that the Idaho Department of Water Resources fails to include the provision described in subsection (B) of section 2 above in any permit issued on application for permit no. 36-8785, then this settlement agreement shall be void, and the protest of the IDF&G shall continue as if this settlement agreement had never been executed.

4. Disclaimers and Reservation of Rights

A. The parties agree to jointly support and defend this settlement agreement against all objections.

B. This settlement agreement has been reached in the process of good faith negotiations for the purpose of resolving legal disputes, including pending protests before the Idaho Department of Water Resources, and all parties agree that no offers and/or compromises made in the course thereof shall be construed as admissions against interest or be used in any legal proceeding other than one for approval, confirmation, interpretation, or enforcement of this settlement agreement.

5. Entire Settlement Agreement and Modifications

A. This settlement agreement sets forth all the covenants, promises, provisions, agreements, conditions, and understandings between the parties and there are no covenants, provisions, promises, agreements, conditions, or understandings, either oral or written other than are herein set forth.

B. Any modification in this settlement agreement shall be in writing signed by an authorized representative of both parties.

6. Governing Law

Both parties agree that this settlement agreement shall be governed by and construed in accordance with the laws of the State of Idaho.

7. Effect of Section Headings

The section headers appearing in this contract are not to be construed as interpretations of the text but are inserted for convenience and reference only.

8. Triplicate Originals

A. This settlement agreement is executed in triplicate. Each of the three settlement agreements with an original signature of each party shall be an original.

B. One original shall be distributed to each party. The third original shall be filed with the Idaho Department of Water Resources.

IN WITNESS WHEREOF the parties executed this settlement agreement.

IDAHO DEPARTMENT OF FISH AND GAME

DAVID PARRISH

BUCKEYE FARMS, INC.

STATE OF IDAHO)
)
County of Jerome)

On this 6th day of August, in the year 2004 before me a Notary Public in and for said State, personally appeared David Parrish, known to me to be the Regional Supervisor of the Idaho Department of Fish and Game, that executed the within instrument, and acknowledged to me that the Idaho Department of Fish and Game and the State of Idaho executed the same.

IN WITNESS WHEREOF, I hereunto set my hand and seal on the day and year last above written.

LORI D. DANIELS
NOTARY PUBLIC
STATE OF IDAHO

Notary Public for Idaho
Residing at Boise, Idaho
My Commission expires: 03-17-05

STATE OF IDAHO)
Blaine)
County of ~~Ada~~)

On this 27th day of July, in the year 2004 before me a Notary Public in and for said State, personally appeared Brian Barker known or satisfactorily proved to me to be the authorized representative of Buckeye Farms, Inc. and that said settlement agreement was signed on behalf of Buckeye Farms, Inc.

IN WITNESS WHEREOF, I hereunto set my hand and seal on the day and year last above written.

Notary Public for Idaho
Residing at ~~Boise~~, Idaho Hailey
My Commission expires: 4-21-2006

KEREN D'ETRICH NOTARY PUBLIC STATE OF IDAHO

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
LAWRENCE G. WASDEN

RECEIVED
AUG 16 2004
Department of Water Resources
Southern Region

August 12, 2004

Mr. Dave Parrish
Idaho Department of Fish and
Game - Magic Valley
868 E. Main
PO Box 428
Jerome, ID 83338

Re: Buckeye Farms Application No. 36-08785--Three Original Agreements for your Signature.

Dear Dave:

The purpose of this letter is to transmit three original Agreements for your signature and to put in writing the process that I used to prepare these documents for your signature. I received on August 3, 2004, one original Agreement signed by a representative of Buckeye Farms. When I examined the document, I found that two blanks on page three had not been filled in by Buckeye. In addition, I did not have three separate originals and the strikeout and underscoring had not been removed. I called Mr. Simpson's office and spoke with an assistant. I was told that two more originals were being sent to their office by mail. I was uncertain whether these were signed. I asked the assistant to advise me when they received them, and I would come over and help assemble three originals for your signature. I received a phone call last Thursday, August 5, 2004. I responded that I could get the documents on Friday. She replied that she would not be in on Friday but that Mr. Simpson would be. I replied that I would call Mr. Simpson. Mr. Simpson and I never connected on Friday, and I was unavailable during the first part of this week. I spoke to Mr. Simpson on Thursday, August 12, 2004. He agreed with me that Buckeye had assented to the Agreement and that he did not want to take the time to send the Agreement back to Buckeye Farms for execution of three complete originals. I modified my electronic copy to eliminate the strikeout and underscoring and to add the date of July 26, 2004 to the two blanks on page three. This date is the date that the Buckeye Representative signed the Agreement. I printed out three originals of the first three pages of the Agreement. I made copies of the last three pages of the Agreement that were signed by a representative of Buckeye Farms. Finally, I assembled the pages into three original Agreements for your signature. I understand that this procedure is acceptable to Mr. Simpson.

Natural Resources Division
P.O. Box 83720, Boise, Idaho 83720-0010
Telephone: (208) 334-2400, FAX: (208) 334-2690
Located at 700 W. Jefferson Street, Suite 210

Please execute before a notary public each of the three originals. Please return all three originals to me for distribution. Thank you for your assistance and patience.

Sincerely,

DAVID J. BARBER
Deputy Attorney General

DJB/ov
Encl.
cc: John Simpson (w/encl.)
Allen Merritt (w/o encl.)

Merritt, Allen

From: Merritt, Allen
Sent: Friday, June 18, 2004 9:14 AM
To: 'John K Simpson'
Cc: Patton, Brian
Subject: RE: Buckeye Riley Creek Application

John:
We have not received the signed withdrawal or signed agreement yet....sounds like it is done but will need the official signed documents.

Thanks

Allen

-----Original Message-----
From: John K Simpson [mailto:jks@idahowaters.com]
Sent: Friday, June 18, 2004 9:40 AM
To: Charles Brockway
Cc: Allen Merritt; Brian Barsotti
Subject: Buckeye Riley Creek Application

Chuck,

As we previously discused, the Buckeye application protest has been resolved. However, Buckeye needs to submit sufficient ability to put the water to beneficial use in order for the application to be approved. In addition this water was the source for Buckeye's mitigation plan which it submitted to the Dept of Commerce. Allen Merritt called requesting an update on your work for Buckeye. Please let me know the status.

Thanks John

4/26 Def 1

SETTLEMENT AGREEMENT OF A PROTEST TO WATER RIGHTS BETWEEN THE IDAHO DEPARTMENT OF FISH AND GAME AND BUCKEYE FARMS INC.

THIS SETTLEMENT AGREEMENT is entered into between the Idaho Department of Fish and Game and Buckeye Farms, Inc. and is made in reference to the following facts:

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B. The term "applicant" means Buckeye Farms, Inc., 18335 U.S. Hwy. 30, Hagerman, ID 83332, by and through its authorized representatives, or any successor or assign.

2. Resolution of Protests

A. The IDF&G conditionally withdraws its protest to the approval of application for Permit No. 36-8785, provided however, that this withdrawal shall be void if the Idaho Department of Water Resources fails to include the provision provided in subdivision (B) of this section as a condition of any permit issued on application for Permit No. 36-8785.

B. The applicant agrees to the following:

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2. The applicant would limit its diversions as follows:

   i. During the period from September 16th of each year to March 15th of the following year, the applicant may divert up to 16 c.f.s.

   ii. During the period from March 16th of each year to September 15th of the year, applicant may only divert 8 c.f.s. when the flow in Riley Creek at the Hunt Ditch Diversion is equal to, or less than 45 c.f.s. When the flow in Riley Creek at the Hunt Ditch Diversion is greater than 45 c.f.s., Buckeye may divert 8 c.f.s. and any amount in excess of 45 c.f.s. up to a total of 16 c.f.s.

3. Where feasible and in the best interests of the parties, the applicant and IDF&G will manage their respective water rights in a coordinated fashion to provide the water that Buckeye needs for its operations and to assure a viable fish population in Riley Creek.

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1. The limitations set forth in section 2(B)(2) shall be included as conditions of use of any permit and any license thereafter issued, subject to such limitations that the Idaho Department of Water Resources may impose at the time of licensing.

2. The following provisions would be included as conditions of use of any permit and any license thereafter issued:

> The diversion and use of water described in permit 36-8785 may be subject to additional conditions and limitations agreed to by the Idaho Department of Fish and Game and the right holder under separate agreement dated _____, 2004, to which the Department is not a party and which may be enforceable by a court of law.
>
> If the separate agreement by the Idaho Department of Fish and Game and the right holder dated April __, 2004 is ever terminated, then the limitations set forth in section 2(B)(2) of that agreement shall no longer apply. Any modification or termination in this settlement agreement shall be in writing signed by an authorized representative of both parties. If a modification or termination agreement is made, the Idaho Department of Water Resources shall be provided a copy by the right holder.

3. Term

A. This settlement agreement shall take effect when executed by both parties hereto. This settlement agreement may be amended by mutual written consent of the parties.

B. In the event that the Idaho Department of Water Resources fails to include the provision described in subsection (B) of section 2 above in any permit issued on application for permit no. 36-8785, then this settlement agreement shall be void, and the protest of the IDF&G shall continue as if this settlement agreement had never been executed.

4. Disclaimers and Reservation of Rights

A. The parties agree to jointly support and defend this settlement agreement against all objections.

B. This settlement agreement has been reached in the process of good faith negotiations for the purpose of resolving legal disputes, including pending protests before the Idaho Department of Water Resources, and all parties agree that no offers and/or compromises made in the course thereof shall be construed as admissions against interest or be used in any legal proceeding other than one for approval, confirmation, interpretation, or enforcement of this settlement agreement.

5. Entire Settlement Agreement and Modifications

A. This settlement agreement sets forth all the covenants, promises, provisions, agreements, conditions, and understandings between the parties and there are no covenants, provisions, promises, agreements, conditions, or understandings, either oral or written other than are herein set forth.

B. Any modification in this settlement agreement shall be in writing signed by an authorized representative of both parties.

6. Governing Law

Both parties agree that this settlement agreement shall be governed by and construed in accordance with the laws of the State of Idaho.

7. Effect of Section Headings

The section headers appearing in this contract are not to be construed as interpretations of the text but are inserted for convenience and reference only.

8. Triplicate Originals

A. This settlement agreement is executed in triplicate. Each of the three settlement agreements with an original signature of each party shall be an original.

B. One original shall be distributed to each party. The third original shall be filed with the Idaho Department of Water Resources.

IN WITNESS WHEREOF the parties executed this settlement agreement.

IDAHO DEPARTMENT OF FISH AND GAME

BUCKEYE FARMS, INC.

_____ _____

DAVID PARRISH

STATE OF IDAHO)
)
County of Jerome)

On this __ day of _____, in the year 200_, before me a Notary Public in and for said State, personally appeared David Parrish, known to me to be the Regional Supervisor of the Idaho Department of Fish and Game, that executed the within instrument, and acknowledged to me that the Idaho Department of Fish and Game and the State of Idaho executed the same.

IN WITNESS WHEREOF, I hereunto set my hand and seal on the day and year last above written.

_____
Notary Public for Idaho
Residing at Boise, Idaho
My Commission expires:_____

STATE OF IDAHO)
)
County of Ada)

On this __ day of _____, in the year 200_, before me a Notary Public in and for said State, personally appeared _____, known or satisfactorily proved to me to be the authorized representative of Buckeye Farms, Inc. and that said settlement agreement was signed on behalf of Buckeye Farms, Inc.

IN WITNESS WHEREOF, I hereunto set my hand and seal on the day and year last above written.

_____

Notary Public for Idaho
Residing at Boise, Idaho
My Commission expires:_____

Merritt, Allen

From: Merritt, Allen
Sent: Friday, April 09, 2004 10:59 AM
To: John Simpson (E-mail); David Barber (E-mail)
Cc: Peppersack, Jeff; Spackman, Gary
Subject: Draft Buckeye Agreement

I have been able to review the draft agreement with attorneys and bureau chiefs in the state office.

We support your efforts in resolving this matter. The issues identified you should consider are:

In the licensing process their may be a situation where the capacity of the diversion works may be such that the entire 16 cfs is not capable of being diverted. If that situation develops then the license would be issued limited on capacity. (For example the license may be for only 15 cfs.) If this is the situation then including 2(B)2 exactly as written would not be appropriate on any subsequent license. IDWR should have the flexibility to reduce the limits where appropriate to match the developed diversion capacity. If the license can be issued for 16 cfs then this becomes a non-issue.

Regarding the termination of the agreement... It is suggested that 5.B. include something like..."**Any modification or termination in this settlement agreement shall be in writing signed by an authorized representative of both parties. If a modification or termination agreement is made IDWR shall be provided a copy by the right holder.**"
If termination of the agreement were to occur after licensing there may be an issue of expanded use. We are considering placing a condition on approval that: "If termination of the agreement should occur IDWR retains jurisdiction to require right holder to file for an amendment or transfer of right depending on status of right at time of termination."

The final issue involves the potential of the permit or right being subordinated to future uses such as domestic, etc. In light of the recent curtailment order of groundwater in WD130 the administration is seriously looking at including some sort of subordination language on the uses proposed by this application. The subordination condition probably does not affect the substance of the agreement but I thought you should be aware of this.

I will be available next week if you desire to hold another conference cal.

SETTLEMENT AGREEMENT OF A PROTEST TO WATER RIGHTS BETWEEN THE IDAHO DEPARTMENT OF FISH AND GAME AND BUCKEYE FARMS INC.

THIS SETTLEMENT AGREEMENT is entered into between the Idaho Department of Fish and Game and Buckeye Farms, Inc. and is made in reference to the following facts:

RECITALS OF FACTS

A. Buckeye Farms, Inc., an Idaho Corporation, filed application for Permit No. 36-8785 to divert at the Hunt Ditch Diversion the waters of Riley Creek, tributary to the Snake River.

B. The Idaho Department of Fish and Game filed a protest to the approval of application for Permit No. 36-8785 because of the potential adverse impacts on fish and wildlife resources in Riley Creek.

C. The purpose of this settlement agreement is to resolve in an amicable manner the protest by the Idaho Department of Fish and Game.

IN CONSIDERATION OF THE PROMISES HEREINAFTER STATED, THE PARTIES AGREE AS FOLLOWS:

1. Definitions

A. The term "Idaho Department of Fish and Game" or the acronym "IDF&G," means the State of Idaho Department of Fish and Game, Magic Valley Region, 868 E. Main St., P.O. Box 428, Jerome, Idaho, 83308-0428, by and through its authorized representatives.

B. The term "applicant" means Buckeye Farms, Inc., 18335 U.S. Hwy. 30, Hagerman, ID 83332, by and through its authorized representatives, or any successor or assign.

2. Resolution of Protests

A. The IDF&G conditionally withdraws its protest to the approval of application for Permit No. 36-8785, provided however, that this withdrawal shall be void if the Idaho Department of Water Resources fails to include the provision provided in subdivision (B) of this section as a condition of any permit issued on application for Permit No. 36-8785.

B. The applicant agrees to the following:

1. The applicant would not file a protest to an application for permit by the IDF&G for the diversion of up to 5 c.f.s. of water into the West Pond. The source would be spills from the Big Bend ditch. The beneficial use would be for fish and wildlife habitat.

2. The applicant would limit its diversions as follows:

   i. During the period from September 16th of each year to March 15th of the following year, the applicant may divert up to 16 c.f.s.

   ii. During the period from March 16th of each year to September 15th of the year, applicant may only divert 8 c.f.s. when the flow in Riley Creek at the Hunt Ditch Diversion is equal to, or less than 45 c.f.s. When the flow in Riley Creek at the Hunt Ditch Diversion is greater than 45 c.f.s., Buckeye may divert 8 c.f.s. and any amount in excess of 45 c.f.s. up to a total of 16 c.f.s.

3. Where feasible and in the best interests of the parties, the applicant and IDF&G will manage their respective water rights in a coordinated fashion to provide the water that Buckeye needs for its operations and to assure a viable fish population in Riley Creek.

C. The IDF&G and applicant request the approval of application for Permit No. 36-8785 with the following conditions:

1. The limitations set forth in section 2(B)(2) shall be included as conditions of use of any permit and any license thereafter issued.

2. The following provisions would be included as conditions of use of any permit and any license thereafter issued:

The diversion and use of water described in permit 36-8785 may be subject to additional conditions and limitations agreed to by the Idaho Department of Fish and Game and the right holder under separate agreement dated April __, 2004, to which the Department is not a party and which may be enforceable by a court of law.

If the separate agreement by the Idaho Department of Fish and Game and the right holder dated April __, 2004 is ever terminated, then the limitations set forth in section 2(B)(2) of that agreement shall no longer apply.

3. Term

A. This settlement agreement shall take effect when executed by both parties hereto. This settlement agreement may be amended by mutual written consent of the parties.

B. In the event that the Idaho Department of Water Resources fails to include the provision described in subsection (B) of section 2 above in any permit issued on application for permit no. 36-8785, then this settlement agreement shall be void, and the protest of the IDF&G shall continue as if this settlement agreement had never been executed.

4. Disclaimers and Reservation of Rights

A. The parties agree to jointly support and defend this settlement agreement against all objections.

B. This settlement agreement has been reached in the process of good faith negotiations for the purpose of resolving legal disputes, including pending protests before the

Idaho Department of Water Resources, and all parties agree that no offers and/or compromises made in the course thereof shall be construed as admissions against interest or be used in any legal proceeding other than one for approval, confirmation, interpretation, or enforcement of this settlement agreement.

5. Entire Settlement Agreement and Modifications

A. This settlement agreement sets forth all the covenants, promises, provisions, agreements, conditions, and understandings between the parties and there are no covenants, provisions, promises, agreements, conditions, or understandings, either oral or written other than are herein set forth.

B. Any modification in this settlement agreement shall be in writing signed by an authorized representative of both parties.

6. Governing Law

Both parties agree that this settlement agreement shall be governed by and construed in accordance with the laws of the State of Idaho.

7. Effect of Section Headings

The section headers appearing in this contract are not to be construed as interpretations of the text but are inserted for convenience and reference only.

8. Triplicate Originals

A. This settlement agreement is executed in triplicate. Each of the three settlement agreements with an original signature of each party shall be an original.

B. One original shall be distributed to each party. The third original shall be filed with the Idaho Department of Water Resources.

IN WITNESS WHEREOF the parties executed this settlement agreement.

IDAHO DEPARTMENT OF FISH AND GAME

BUCKEYE FARMS, INC.

_____ _____

DAVID PARRISH

STATE OF IDAHO)
)
County of Jerome)

On this __ day of _____, in the year 200_, before me a Notary Public in and for said State, personally appeared David Parrish, known to me to be the Regional Supervisor of the Idaho Department of Fish and Game, that executed the within instrument, and acknowledged to me that the Idaho Department of Fish and Game and the State of Idaho executed the same.

IN WITNESS WHEREOF, I hereunto set my hand and seal on the day and year last above written.

_____
Notary Public for Idaho
Residing at Boise, Idaho
My Commission expires:_____

STATE OF IDAHO)
)
County of Ada)

On this __ day of _____, in the year 200_, before me a Notary Public in and for said State, personally appeared _____, known or satisfactorily proved to me to be the authorized representative of Buckeye Farms, Inc. and that said settlement agreement was signed on behalf of Buckeye Farms, Inc.

IN WITNESS WHEREOF, I hereunto set my hand and seal on the day and year last above written.

_____
Notary Public for Idaho
Residing at Boise, Idaho
My Commission expires:_____

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
LAWRENCE G. WASDEN

RECEIVED
APR 0 [illegible]
Department of Water Resources
Southern Region

April 2, 2004

HAND DELIVERED

Mr. Allen D. Merritt
Idaho Department of Water Resources
1341 Fillmore Street, Suite 200
Twin Falls, ID 83301-3380

Re: Buckeye Farms Application No. 36-08785.

Dear Allen:

The Idaho Department of Fish and Game and the applicant in the above-entitled matter have reached a revised tentative settlement of the protest filed by the Idaho Department of Fish and Game. The parties addressed the concerns raised by your previous review of an earlier draft of the settlement agreement. This revision includes the provisions that the parties discussed with you on the phone last week. The parties have not executed the settlement agreement because the parties wanted to give the Idaho Department of Water Resources one more opportunity to review the settlement agreement. Please provide Mr. John Simpson and me the Department's comments on the enclosed revised tentative settlement agreement.

Sincerely,

DAVID J. BARBER
Deputy Attorney General
Natural Resources Division

DJB/ov
Encl.
cc: Phillip J. Rassier
Jeff Peppersack
John Simpson
Dave Parrish
Cindy Robertson

Natural Resources Division
P.O. Box 83720, Boise, Idaho 83720-0010
Telephone: (208) 334-2400, FAX: (208) 334-2690
Located at 700 W. Jefferson Street, Suite 210

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 29, 2004

John Simpson
205 N. 10th Street, Suite 520
PO Box 2139
Boise, ID 83701-2139

RE: Application for Permit 36-8785 in the name of Buckeye Farms Inc.

Dear John:

Thank you for your efforts to resolve the protest on this particular application. As you know the application seeks 16 cfs for Wildlife, Recreation, Aesthetic, and Fish Propagation purposes.

These uses may be approvable; however, additional justification for the quantity proposed will be necessary before the Department finalizes processing this application. Quantity should be justified based on actual need rather than just the availability of flow. Without sufficient justification of the quantity, the Department will subordinate the uses to future development for other purposes that are not subordinated. Some variation of the following condition may be imposed:

> *"The rate of diversion for wildlife purposes authorized by this permit shall be junior and subordinate to all rights to the use of water, other than wildlife purposes, within the State of Idaho that are initiated later in time than the priority of this permit and shall not give rise to any right or claim against future rights to the use of water, other than wildlife purposes, within the State of Idaho initiated later in time than the priority permit."*

The Department will hold processing of this application for 30 days (Assuming the protest is resolved) to allow submittal of the required information in support of your application. Additional time may be granted by the Department upon receipt of a written request and sufficient justification for an extension. After that time, if we do not receive a response from you regarding the application, the Department will process the application as noted above.

If you have questions please feel free to contact me at this office.

Sincerely,

Allen Merritt, P.E.
Southern Region Manager

CC: Dan Yore – Buckeye Farms Inc.
Jeff Peppersack – IDWR State Office

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

December 29, 2003

David Barber
Office of the Attorney General
PO Box 83720
Boise, ID 83720-0010

RE: Buckeye Farms Application for Permit No. 36-8785

Dear David:

I have reviewed your letter and draft settlement agreement dated December 22, 2003 outlining a proposed settlement agreement between Buckeye Farms and F&G. I have also discussed these documents with Jeff Peppersack in our state office. *As background I have enclosed a copy of the July 29, 2003 Administrator's Memorandum regarding conditional protest withdrawals and resolution of contested applications for your reference.* In light of the referenced memorandum I wish to make the following comments regarding **Part 2. Resolution of Protests** of the draft agreement:

-2.B.2. appears to be something the department could add as a condition of use.

-All other bullets of the agreement do not appear to be appropriate to be included as conditions of use by the department. Specifically:

-2.B.1. does not appear to be appropriate to be included as a condition of use on this application since the Department does not have an application alluded to in the bullet filed before it so the definition of the application may be vague. Additionally the Department does not wish to be placed in a position to litigate or enforce this matter if the applicant was to file a protest if such a hypothetical application were to be filed by the protestant.

-2.B.3. of the draft agreement does not appear to be appropriate to be included as a condition of use on this application since there are terms used in the bullet that are only quantifiable or best understood by the parties and best enforceable by those parties.

-2.C. (See below)

These bullets, however, may be considered part of an outside or separate agreement between Buckeye Farms and F&G and said agreement would be referenced using the standard condition:

> *The diversion and use of water described in Permit 36-8785 may be subject to additional conditions and limitations agreed to by the protestant and the right holder under a separate agreement to which the Department is not a party and which may be enforceable by a court of law.*

Thank you for the opportunity to review your draft agreement. It appears the parties are very close to settlement. I thank all involved for their efforts to resolve this matter prior to scheduling a hearing. Hopefully with some adjustment of the draft agreement a resolution can be finalized. If you have questions about my comments please feel free to contact me at this office.

Sincerely,

Allen Merritt, PE
Southern Region Manager

CC: John Simpson
Jeff Peppersack
Dave Parrish

ADMINISTRATOR'S MEMORANDUM

Application Processing Memo No. 68
Transfer Processing Memo No. 25

RECEIVED
JUL 31 2003
Department of Water Resources
Southern Region

To: Regional Offices
Water Allocation Bureau

From: L. Glen Saxton

Re: **CONDITIONAL PROTEST WITHDRAWAL FOR RESOLUTION OF A CONTESTED APPLICATION**

Date: July 29, 2003

The purpose of this memorandum is to provide guidance to Department staff regarding the procedure to be followed upon receipt of a conditional withdrawal of a protest to a water right application.

Protests to water right applications are often resolved through stipulated agreement resulting from negotiations between parties. In some cases, an agreement between parties includes a statement that the protest is withdrawn provided the Department includes specific language as conditions of approval of the water right application. Sometimes, however, the stipulations proposed in the "conditional" withdrawals are not acceptable to the Department for a variety of reasons. Department Rule of Procedure 612 provides that "When a settlement is presented to the presiding officer, the presiding officer will prescribe procedures appropriate to the nature of the settlement to consider the settlement."

The Department should encourage settlement of contested cases through informal means and should make every effort to facilitate such settlements. To increase the likelihood that the settlement agreement will be acceptable to the Department, staff that conduct pre-hearing conferences should advise the parties that proposed settlement conditions may be considered unacceptable if the conditions are:

- Contrary to law or rules of the Department
- Outside Department jurisdiction
- Unreasonably burdensome upon the Department including staff time and Department resources
- Inconsistent with Department policy
- Inconsistent with proper management of the water resource or orderly administration of water rights
- Unclear or ambiguous meaning or intent.

Instruction should be provided at the conference stage before negotiations commence, if possible, and parties should be informed that this guidance does not prohibit or limit settlement agreements between the parties separate from requirements of the Department.

If a conditional protest withdrawal proposes settlement conditions to be applied to an approval, the Department must determine if the conditions are appropriate prior to determining that a protest is withdrawn. Regional Managers facilitating protest resolutions have broad discretion to determine the acceptability of proposed conditions but in some questionable cases, may want to seek legal or administrative review.

If the settlement conditions are determined to be unacceptable, the Department should prepare a letter to inform the parties that the conditional protest withdrawal is not acceptable and should list the reasons why the conditions cannot be accepted. The letter should also inform the parties that the protests will not be considered by the Department as withdrawn, that the pending application remains an active contested case before the Department, and that the parties have further opportunity to resolve the contested matter through continued negotiations.

If the settlement conditions are determined to be acceptable, and the application is otherwise approvable, the Department should acknowledge receipt of the conditional withdrawal of protest. The acknowledgement letter should inform the parties that the Department may modify the conditions as written to fit the approval format or may substitute a standard condition of the Department with essentially the same language and intent. Minor revisions can be made to help clarify certain references within a condition such as the addition of water right or transfer numbers, and well or other diversion locations. Standard conditions of the Department may be used to accommodate data entry and help avoid conflicting interpretations by Water Masters, Department staff and other water users. However, in preparation of an approval document, Department staff should not modify or replace specific language that relates only to interaction of the parties or the factual circumstances unless a change is necessary to prevent conflicting interpretations. In such cases, or in cases where acceptability is questionable, State office staff should consult with the Regional Manager and other staff who facilitated the protest resolution and, if significant changes appear to be warranted, the Department should notify the parties in writing of the changes or concern, prior to issuance of an approval. If a party objects in writing to the proposed changes, IDWR will inform the parties that the protest is not considered withdrawn, that the pending application remains an active contested case before the Department, and that the parties have further opportunity to resolve the contested matter through continued negotiations.

When multiple parties protest an application, one or more of the parties may withdraw their protests prior to hearing. If a withdrawal of protest agreement does not resolve the entire contested case, failure to determine acceptability of proposed condition language at the time of withdrawal could result in a later rejection of the proposed language after the dispute between the other parties is resolved. Conditional language proposed in a withdrawal agreement between the applicant and less than all of the protestants should be reviewed prior to hearing on the matter and a letter issued stating whether the proposed language would be acceptable to IDWR if the application is ultimately approved. Care should

be exercised in issuing the letter, however, if, by finding the proposed condition to be acceptable, IDWR might be viewed as having predetermined the outcome of the contested case.

Approvals are issued as preliminary orders of the Department and also must be provided to all parties involved in the conditional withdrawals. Parties can petition for reconsideration of a preliminary order for any reason, including disagreement with the conditions of approval, if any were modified, substituted or added by the Department.

This guidance does not limit or prohibit the use of settlement agreements that do not impose conditions on the approval. In such cases, the existence of an agreement can be recognized with a standard condition of the Department as follows:

> The diversion and use of water described in Transfer <00000> may be subject to additional conditions and limitations agreed to by the protestant(s) and the right holder under a separate agreement to which the Department is not a party and which may be enforceable by a court of law.

STATE OF IDAHO

OFFICE OF THE ATTORNEY GENERAL

LAWRENCE G. WASDEN

December 22, 2003

Mr. Allen D. Merritt
Idaho Department of Water Resources
1341 Fillmore Street, Suite 200
Twin Falls, ID 83301-3380

Re: Buckeye Farms Application No. 36-08785.

Dear Allen:

The Idaho Department of Fish and Game and the applicant in the above-entitled matter have reached a tentative settlement of the protest filed by the Idaho Department of Fish and Game. However, the parties have not executed the agreement because we wanted to give the Idaho Department of Water Resources the opportunity to review the settlement. If the Department has a problem with the settlement, then it may affect how the parties proceed. In the past, I have submitted draft settlement agreements to the Department for their comment. Mr. Jeff Peppersack recently reviewed a similar settlement agreement in another matter for me, and his comments were helpful to the parties. Please provide me the Department's comments on the enclosed tentative settlement agreement.

Sincerely,

DAVID J. BARBER
Deputy Attorney General
Natural Resources Division

DJB/ov
Encl.
cc: Phillip J. Rassier
Jeff Peppersack
John Simpson
Dave Parrish
Cindy Robertson

RECEIVED

DEC 23 2003

Department of Water Resources
Southern Region

Natural Resources Division
P.O. Box 83720. Boise, Idaho 83720-0010
Telephone: (208) 334-2400, FAX: (208) 334-2690
Located at 700 W. Jefferson Street, Suite 210

SETTLEMENT AGREEMENT OF A PROTEST TO WATER RIGHTS BETWEEN THE IDAHO DEPARTMENT OF FISH AND GAME AND BUCKEYE FARMS INC.

THIS SETTLEMENT AGREEMENT is entered into between the Idaho Department of Fish and Game and Buckeye Farms, Inc. and is made in reference to the following facts:

RECITALS OF FACTS

A. Buckeye Farms, Inc., an Idaho Corporation, filed application for Permit No. 36-8785 to divert at the Hunt Ditch Diversion the waters of Riley Creek, tributary to the Snake River.

B. The Idaho Department of Fish and Game filed a protest to the approval of application for Permit No. 36-8785 because of the potential adverse impacts on fish and wildlife resources in Riley Creek.

C. The purpose of this settlement agreement is to resolve in an amicable manner the protest by the Idaho Department of Fish and Game.

IN CONSIDERATION OF THE PROMISES HEREINAFTER STATED, THE PARTIES AGREE AS FOLLOWS:

1. Definitions

A. The term "Idaho Department of Fish and Game" or the acronym "IDF&G," means the State of Idaho Department of Fish and Game, Magic Valley Region, 868 E. Main St., P.O. Box 428, Jerome, Idaho, 83308-0428, by and through its authorized representatives.

B. The term "applicant" means Buckeye Farms, Inc., 18335 U.S. Hwy. 30, Hagerman, ID 83332, by and through its authorized representatives, or any successor or assign.

RECEIVED
DEC 23 2003
Department of Water Resources
Southern Region

2. Resolution of Protests

A. The IDF&G conditionally withdraws its protest to the approval of application for Permit No. 36-8785, provided however, that this withdrawal shall be void if the Idaho Department of Water Resources fails to include the provision provided in subdivision (B) of this section as a condition of any permit issued on application for Permit No. 36-8785.

B. The applicant agrees to the following:

1. The applicant would not file a protest to an application for permit by the IDF&G for the diversion of up to 5 c.f.s. of water into the West Pond. The source would be spills from the Big Bend ditch. The beneficial use would be for fish and wildlife habitat.

2. The applicant would limit its diversions as follows:

   i. During the period from September 16th of each year to March 15th of the following year, the applicant may divert up to 16 c.f.s.

   ii. During the period from March 16th of each year to September 15th of the year, applicant may only divert 8 c.f.s. when the flow in Riley Creek at the Hunt Ditch Diversion is equal to, or less than 45 c.f.s. When the flow in Riley Creek at the Hunt Ditch Diversion is greater than 45 c.f.s., Buckeye may divert 8 c.f.s. and any amount in excess of 45 c.f.s. up to a total of 16 c.f.s.

3. Where feasible and in the best interests of the parties, the applicant and IDF&G will manage their respective water rights in a coordinated fashion to provide the water that Buckeye needs for its operations and to assure a viable fish population in Riley Creek.

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DEC 23 2003
Department of Water Resources
Southern Region

C. The IDF&G and applicant request the approval of application for Permit No. 36-8785 with the following condition:

> The use of water under this permit and any license issued thereafter is subject to the provisions of the **SETTLEMENT AGREEMENT OF A PROTEST TO WATER RIGHTS BETWEEN THE IDAHO DEPARTMENT OF FISH AND GAME AND BUCKEYE FARMS, INC.** entered on ____, 2003. This settlement agreement is incorporated herein by reference.

3. Term

A. This settlement agreement shall take effect when executed by both parties hereto. This settlement agreement may be amended by mutual written consent of the parties.

B. In the event that the Idaho Department of Water Resources fails to include the provision described in subsection (B) of section 2 above in any permit issued on application for permit no. 36-8785, then this settlement agreement shall be void, and the protest of the IDF&G shall continue as if this settlement agreement had never been executed.

4. Disclaimers and Reservation of Rights

A. The parties agree to jointly support and defend this settlement agreement against all objections.

B. This settlement agreement has been reached in the process of good faith negotiations for the purpose of resolving legal disputes, including pending protests before the Idaho Department of Water Resources, and all parties agree that no offers and/or compromises made in the course thereof shall be construed as admissions against interest or be used in any legal proceeding other than one for approval, confirmation, interpretation, or enforcement of this settlement agreement.

RECEIVED
DEC 23 2003
Department of Water R
Southern Reg

5. Entire Settlement Agreement and Modifications

A. This settlement agreement sets forth all the covenants, promises, provisions, agreements, conditions, and understandings between the parties and there are no covenants, provisions, promises, agreements, conditions, or understandings, either oral or written other than are herein set forth.

B. Any modification in this settlement agreement shall be in writing signed by an authorized representative of both parties.

6. Governing Law

Both parties agree that this settlement agreement shall be governed by and construed in accordance with the laws of the State of Idaho.

7. Effect of Section Headings

The section headers appearing in this contract are not to be construed as interpretations of the text but are inserted for convenience and reference only.

8. Triplicate Originals

A. This settlement agreement is executed in triplicate. Each of the three settlement agreements with an original signature of each party shall be an original.

B. One original shall be distributed to each party. The third original shall be filed with the Idaho Department of Water Resources.

IN WITNESS WHEREOF the parties executed this settlement agreement.

IDAHO DEPARTMENT OF FISH AND GAME

BUCKEYE FARMS, INC.

DAVID PARRISH

RECEIVED
DEC 23 2003
Department of Water Resources
Southern Region

STATE OF IDAHO)
)
County of Jerome)

On this __ day of _____, in the year 200_, before me a Notary Public in and for said State, personally appeared David Parrish, known to me to be the Regional Supervisor of the Idaho Department of Fish and Game, that executed the within instrument, and acknowledged to me that the Idaho Department of Fish and Game and the State of Idaho executed the same.

IN WITNESS WHEREOF, I hereunto set my hand and seal on the day and year last above written.

_____
Notary Public for Idaho
Residing at Boise, Idaho
My Commission expires: _____

STATE OF IDAHO)
)
County of Ada)

On this __ day of _____, in the year 200_, before me a Notary Public in and for said State, personally appeared _____, known or satisfactorily proved to me to be the authorized representative of Buckeye Farms, Inc. and that said settlement agreement was signed on behalf of Buckeye Farms, Inc.

IN WITNESS WHEREOF, I hereunto set my hand and seal on the day and year last above written.

_____
Notary Public for Idaho
Residing at Boise, Idaho
My Commission expires: _____

RECEIVED
DEC 23 2003
Department of Water Resources
Southern Region

RECEIVED
MAY 27 2003
Department of Water Resources
Southern Region

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
LAWRENCE G. WASDEN

May 23, 2003

John K. Simpson
Barker, Rosholt & Simpson, LLP
P.O. Box 2139
Boise, ID 83701-2139

Re: Application for Permit No. 36-08783 in the Name of Buckeye Farms from Riley Creek and Request for Measurement Data

Dear John:

The purposes of this letter are to provide you an update on the Idaho Department of Fish and Game's analysis of the above application and to request some further information. Ms. Cindy Robertson conducted a field examination of Riley Creek last week. She concluded that additional data would assist her. She requested the following information: (1) Tabular data of the water levels, water depths, and bottom profile from which David Shaw created the graph enclosed with his letter dated April 9, 2003; (2) water surface elevations and water depths for stream flows at 10 cubic feet per second (cfs), 20 cfs, 30 cfs, 40 cfs, and 50 cfs.; and (3) an explanation of the relationship between the water level depicted in Mr. Shaw's graph and the gage height and stage associated with his rating curve. If you are willing to provide this information, please send the data to me, and I will make sure that Ms. Robertson receives it.

Thank you in advance for your help in this matter.

Sincerely,

DAVID J. BARBER
Deputy Attorney General

DJB/ov

cc: Ms. Cindy Robertson
Mr. David Parrish
Mr. David Shaw
Mr. Allen Merritt

Natural Resources Division
P.O. Box 83720, Boise, Idaho 83720-0010
Telephone: (208) 334-2400, FAX: (208) 334-2690
Located at 700 W. Jefferson Street, Suite 210

STATE OF IDAHO

OFFICE OF THE ATTORNEY GENERAL

LAWRENCE G. WASDEN

MAY - 1 2003

April 30, 2003

Mr. Allen D. Merritt
Idaho Department of Water Resources
1341 Fillmore St., Suite 200
Twin Falls, ID 83301

Re: Application for Permit No. 36-08785.

Dear Mr. Merritt:

This letter is a status report concerning the protest to the above application by the Idaho Department of Fish and Game, hereinafter "IDF&G." The applicant provided IDF&G with the following information: (1) a set of measurements made by the water master for Water District 36A on March 28, 2003, (2) some additional flow measurement data collected by Mr. David Shaw, and (3) the cross-section measurements also made by Mr. David Shaw. The latter two items were not received until April 25, 2003, and personnel of IDF&G have been tied up in some meetings since that date. Consequently, IDF&G has not evaluated the data. In addition, IDF&G intends to collect some data that will allow an evaluation of the relationship between flow and availability of fish habitat. Assignments related to the Snake River Basin Adjudication and recent rains have delayed the collection of that data. If the weather cooperates, I understand that IDF&G intends to collect the data necessary for that evaluation on May 6th or 7th. I will report back to you as soon as possible after those data are evaluated. That data should allow the IDF&G to evaluate whether to continue with the protest. I request that you set this matter for a further status report on June 1, 2003.

I provided Mr. Simpson a draft of this letter, and he informed me that he did not object to me sending it to you.

Sincerely,

David J. Barber
Deputy Attorney General

DJB/ov
Cc: John Simpson

Natural Resources Division
P.O. Box 83720, Boise, Idaho 83720-0010
Telephone: (208) 334-2400, FAX: (208) 334-2690
Located at 700 W. Jefferson Street, Suite 210

Applic. 36-08785 Roster of Attendance

Date: 2/24/03

Place: IDWR Conf Rm
S.O. Boise

Conf. officer: Allen Merritt

Name	Representing
Cindy Robertson	IDFG
David J Barber	IDF&G
David Shaw	Buckeye
DAN YORE	Buckeye Farms Inc.
John Simpson	Atty - Buckeye Farms
Dave Parrish	By Phone F&G
Scott Gamo	" "

1/21/03 Pre-hearing Conf

Additional Water

22 -23 CFS

Ditch may have to be enlarged.

28 Hunt Ditch
+40 Conyers Ditch
68

Feb 25th 2nd Prehearing Conf

Simpson

























STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
LAWRENCE G. WASDEN

RECEIVED
FEB 21 2003
Department of Water Resources
Southern Region

February 19, 2003

VIA US MAIL AND FACSIMILE
(208) 736-3037

Mr. Allen D. Merritt
Idaho Department of Water Resources
1341 Fillmore Street, Suite 200
Twin Falls, ID 83301-3380

Re: Buckeye Farms Application No. 36-08785.

Dear Allen:

Mr. John Simpson sent the flow data to me, and I forwarded the information to appropriate personnel with the Idaho Department of Fish and Game. In our review of the data, we note that there are large fluctuations in the flow of Riley Creek over short periods of time. We assume without knowing that these fluctuations are due in part by the diversion of water by other persons from Riley Creek. To help us understand the facts better, I would appreciate a copy of the diversion records from Riley Creek. Since a water measurement district exists for this geographic area, we assume that those records are readily available from your office. Please forward as soon as possible by e-mail or facsimile a copy of those records. If those records are available in the state office in Boise, please so advise me, and I will obtain a copy from that office. Thank you.

Sincerely,

David J. Barber
Deputy Attorney General
Natural Resources Division

DJB/ov

cc: Dave Parrish
Cindy Robertson

P.O. Box 83720, Boise, Idaho 83720-0010
Telephone: (208) 334-2400, FAX: (208) 334-2530
Located at 700 W. Jefferson Street, Suite 210

February 27, 2002

To: John Simpson

From: David B. Shaw

Re: Riley Creek Measurement Data

Below are measurement data for Riley Creek taken in 1997 downstream from the LaMoyne Ditch near Hagerman. The data below are from current meter measurements that were taken to develop a rating curve for a recording gage installed at this location for most of the year. The rating curve was not completed at the time the measurements were taken but will be completed so the entire gage record will be available prior to any hearing on the Buckeye water right application from Riley Creek.

Riley Creek Dischage in CFS	
2/24/97	60.2
3/21/97	62.1
4/21/97	50.8
5/55/97	68.8
6/20/97	34.1
7/19/97	44.3
8/20/97	37.8
9/19/97	73.6
10/6/97	44.4
10/21/97	63.6
11/19/97	58.0
1/6/98	96.0

Also included are two attached sheets of historical data for Riley Creek covering the period 1951 through 1996. My records indicate the attached measurements were completed by the US Geological Survey.

Please let me know if you need additional information.

RILEY CREEK MEASUREMENTS
Measurements taken 300' downstream from Lewis Spring in SW1/4NE1/4 S6 T8S R14E
Measurements taken in March or April unless noted
Measurement below Brailsford Ditch and excludes Bickle Spring inflow when possible

Year	Flow	
51	63.0	
52	54.8	
53	54.4	
54	63.5	
55	59.6	
56	70.4	
57	69.0	Bickle Spring water was added to Riley Creek in
58	69.0	about August 1957.
59	62.1	
60		
61		
62		
63	58.8	
64	56.3	
65	55.6	
66	63.4	
67	54.7	
68		
69	57.7	
70	57.3	
71	60.9	
72	64.7	
73	57.3	
74	72.0 *	
75	46.0	
76	56.4	
77	61.3	
78	74.0 *	
79	71.9 *	
80	63.1	
81	57.5 *	
82	47.2	
83	55.2	
84	57.3	
85	56.2	
86	70.4	
87	74.1	
88	66.0 *	
89	66.9	
90		
91	72.9	
92	73.6	
93	85.7 *	

Year	Flow
94	74.1 +
95	57.0
96	73.9

* May include Bickle Spring inflow
+ Includes Brailsford Ditch diversion added to Riley Creek flow

BEFORE THE DEPARTMENT OF WATER OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO. 36-8785 BUCKEYE FARMS, INC., Applicant Aqua Life Inc, Western Legends LC, ID Dept. of Fish & Game, Protestants Fisheries Development Co, Intervenor	NOTICE OF PRE-HEARING CONFERENCE SOURCE: Riley Creek Tributary to Snake River COUNTY: Gooding

On October 29, 1998 Buckeye Farms, Inc., applicant, filed with the Department of Water Resources an Application to Appropriate the Public Waters of the State of Idaho. The Department has received protests against the approval of said application from the above captioned protestants. In addition, a Petition for Intervention was granted to Fisheries Development Co. on March 1, 1999.

Subsequently, Fisheries Development Co. withdrew as a party on January 24, 2003; a Default Order to Set Aside the protests of Western Legends LLC and Aqua Life Corporation was issued by the Department on January 30, 2003.

THEREFORE, The Department has set the matter of the sole remaining protest of the Idaho Department of Fish and Game for conference on **Monday - February 24, 2003 commencing at 10:00 a.m. in Conference Room D at the Idaho Department of Water Resources State Office, 1301 North Orchard Street; Boise 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 6th day of February, 2003.

Allen D. Merritt, P.E.
Regional Manager

CERTIFICATE OF MAILING

I hereby certify that on the 6th day of February, 2003 a true and correct copy of the above and foregoing Notice of Pre-hearing Conference was forwarded with all required charges prepared, by Regular U.S. Mail, to the parties listed:

ATTN DAN YORE
BUCKEYE FARMS INC
18335 US HWY 30
HAGERMAN ID 83332

JOHN K. SIMPSON
BARKER ROSHOLT & SIMPSON LLP
PO BOX 2139
BOISE ID 83701-2139

DAVID B. SHAW
ERO RESOURCES CORP
1106 NORTH COLE RD-STE# C
BOISE ID 83704-8661

DAVID PARRISH
ID DEPT FISH & GAME
PO BOX 428
JEROME ID 83338

DAVID BARBER
NATURAL RESOURCES DIV.
OFFICE OF ATTORNEY GENERAL
PO BOX 83720
BOISE ID 83720-0010

Mary A. Baldwin

Mary A. Baldwin
Administrative Assistant I

Merritt, Allen

From: Barber, David [dbarber@ag.state.id.us]
Sent: Wednesday, February 05, 2003 8:30 AM
To: 'Merritt, Allen'
Subject: RE: Pre-hearing Conference for Buckeye Application 36-8785

Dear Allen:
I have checked with IDF&G and the morning of February 24th works for them. They have not decided whether they will attend in person or will participate by telephone conference call. I will be at the pre-hearing conference in person.
Sincerely,
David J. Barber

-----Original Message-----
From: Merritt, Allen [mailto:AMerritt@idwr.state.id.us]
Sent: Thursday, January 30, 2003 11:31 AM
To: 'dbarber@ag.state.id.us'
Subject: FW: Pre-hearing Conference for Buckeye Application 36-8785

<< File: Allen D Merritt.vcf >>

> -----Original Message-----
> From: Merritt, Allen
> Sent: Thursday, January 30, 2003 11:30 AM
> To: John Simpson (E-mail); 'dbarber@ag.state.id.us'
> Subject: FW: Pre-hearing Conference for Buckeye Application 36-8785
>
> Gentlemen:
>
> I have talked to Mr. Simpson and the morning of February 24th is workable
> for a conference in Boise ~~at our State~~ Office. I have tentatively
> reserved conference room D from 10:00 am to Noon. The room has a
> conference phone available.
>
> It is possible that if the gentlemen from F&G or Mr. Yore or others could
> not attend they could participate by phone.
>
> I understand Mr. Simpson will be providing the flow information to F&G
> soon so they will have a chance for evaluation before 2/24.
>
> Mr. Barber, how does this fit into your schedule?
>
> Allen
>
> -----Original Message-----
> From: Merritt, Allen
> Sent: Wednesday, January 29, 2003 12:04 PM
> To: Dreher, Karl; John Simpson (E-mail);
> 'dbarber@ag.state.id.us'
> Subject: Pre-hearing Conference for Buckeye Application
> 36-8785
>
> Gentlemen,
>
> At our last meeting we discussed setting another pre-hearing
> conference for February 25th.
>
> Since our last meeting other protestants have either withdrawn or
> will default by the end of this day and their protests will be set aside.
>
> There is currently a conflict with a meeting I must attend in Boise
> on February 25th.

Monday
2/24/03
10:00 - 12:00
Conf Rm D in State office

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION)
FOR PERMIT NO. 36-8785 IN THE)
NAME OF BUCKEYE FARMS, INC)
_____)

DEFAULT ORDER

This matter having come before the Idaho Department of Water Resources (department), the department makes the following Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT

1. On January 22, 2003, the department served a Notice of Proposed Default Order upon Western Legends LLC, Aqua Life Corporation, and Fisheries Development Company for failure to appear at a pre-hearing conference held on January 21, 2003, in Hagerman, Idaho.

2. Fisheries Development Company on January 24th withdrew as a party in this matter.

3. Aqua Life Corporation and Western Legends LLC did not respond to the Notice of Proposed Default Order.

CONCLUSIONS OF LAW

1. IDAPA Rule 37.01.01702 (Rule of Procedure 702) authorizes the department to issue a Default Order for failure to timely respond to the Notice of Proposed Default Order.

2. The department should issue Default Orders.

ORDER

IT IS THEREFORE, HEREBY ORDERED that Aqua Life Corporation, and Western Legends LLC are in default and that their respective protests to Application for Permit No. 36-8785 are **SET ASIDE** and will not be further considered by the department.

Dated this 30th day of January, 2003.

ALLEN MERRITT
Conference Officer

CERTIFICATE OF MAILING

I hereby certify that on the 30th day of January, 2003 a true and correct copy of the above and foregoing Default Order was forwarded with all required charges prepared, by Regular U.S. Mail, to the parties listed:

ATTN DAN YORE
BUCKEYE FARMS INC
18335 US HWY 30
HAGERMAN ID 83332

DAVID PARRISH
ID DEPT FISH & GAME
PO BOX 428
JEROME ID 83338

JOHN K. SIMPSON
BARKER ROSHOLT & SIMPSON LLP
PO BOX 2139
BOISE ID 83701-2139

DAVID BARBER
OFFICE OF ATTORNEY GENERAL
PO BOX 83720
BOISE ID 83720-0010

DAVID B. SHAW
ERO RESOURCES CORP
1106 NORTH COLE RD-STE# C
BOISE ID 83704-8661

Mary Baldwin

Mary A.. Baldwin
Administrative Assistant I

Merritt, Allen

From: Merritt, Allen
Sent: Wednesday, January 29, 2003 12:04 PM
To: Dreher, Karl; John Simpson (E-mail); 'dbarber@ag.state.id.us'
Subject: Pre-hearing Conference for Buckeye Application 36-8785

Gentlemen,

At our last meeting we discussed setting another pre-hearing conference for February 25th.

Since our last meeting other protestants have either withdrawn or will default by the end of this day and their protests will be set aside.

There is currently a conflict with a meeting I must attend in Boise on February 25th.

Other options for a conference include the morning of February 24th at the State Office or a brief conference after 5:00 pm on February 25th at the State Office in Boise.

Since participation by other parties is dwindling it may also be appropriate for a phone conference instead of a meeting.

Please provide me your feedback and a list of potential dates.

Thanks



Allen D Merritt.vcf

RECEIVED
JAN 24 2003
Department of Water Resources

Daniel V. Steenson (ISB#4332)
Charles L. Honsinger (ISB #5240)
S. Bryce Farris (ISB#5636)
Ringert Clark, Chartered
P.O. Box 2773
Boise, ID 83702
(208)342-4591

Attorneys for Fisheries Development Co.

RECEIVED
JAN 28 2003
Department of Water Resources
Southern Region

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO. 36-08785 IN THE NAME OF BUCKEYE FARMS, INC.	NOTICE OF WITHDRAWAL OF PETITION TO INTERVENE

Fisheries Development Co., by and through its attorneys of record Ringert Clark, Chartered, hereby withdraws its Petition to Intervene in the protested matter of Application for Permit Number 36-08785, filed in the name of Buckeye Farms, Inc.

DATED this 24th day of January, 2003.

RINGERT CLARK CHARTERED

S. Bryce Farris
Attorneys for Fisheries Development Co.

ORIGINAL

CERTIFICATE OF SERVICE

I certify that on January 24th, 2003, I mailed the original and copies of this document, including all attachments to the following:

Idaho Dept. of Water Resources
Southern Region Office
222 Shoshone St. East
Twin Falls, Idaho 83301

David Barber
Natural Resource Div.
Office of Attorney General
P.O. Box 83720
Boise, ID 83720-0010

Buckeye Farms, Inc.
18335 U.S. Hwy. 30
Hagerman, Idaho 83332

David Parrish
ID. Dept. Fish & Game
P.O. Box 428
Jerome, Idaho 83338

John K. Simpson
Barker Rosholt & Simpson
P.O. Box 2139
Boise, ID 83701-2193

David B. Shaw
ERO Resources
1106 North Cole Rd., Suite C
Boise, ID 83704-8661

Ken Ellis
Aqua Life Corp.
P.O. Box 1867
Twin Falls, Idaho 83303-1867

Western Legends LC
P.O. Box 764
Ketchum, ID 83340

S. Bryce Farris

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

January 27, 2003

S. BRYCE FARRIS
RINGERT CLARK CHARTERED
PO BOX 2773
BOISE ID 83702

Re: Application for Permit No. 36-8785 (Buckeye Farms, Inc.)

Dear Mr. Farris:

This office acknowledges receipt of the withdrawal of the Petition to Intervene on behalf of FISHERIES DEVELOPMENT CO. against the above referenced application.

Since there were properly filed protests, their concerns will need to be addressed by the Department before final processing of the application can be completed.

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

Cc:
ATTN DAN YORE
BUCKEYE FARMS INC
18335 US HWY 30
HAGERMAN ID 83332

JOHN K. SIMPSON
BARKER ROSHOLT & SIMPSON LLP
PO BOX 2139
BOISE ID 83701-2139

Daniel V. Steenson (ISB#4332)
Charles L. Honsinger (ISB #5240)
S. Bryce Farris (ISB#5636)
Ringert Clark, Chartered
P.O. Box 2773
Boise, ID 83702
(208)342-4591

Attorneys for Fisheries Development Co.

RECEIVED
JAN 27 2003
Department of Water Resources
Southern Region

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO. 36-08785 IN THE NAME OF BUCKEYE FARMS, INC.	NOTICE OF WITHDRAWAL OF PETITION TO INTERVENE

Fisheries Development Co., by and through its attorneys of record Ringert Clark, Chartered, hereby withdraws its Petition to Intervene in the protested matter of Application for Permit Number 36-08785, filed in the name of Buckeye Farms, Inc.

DATED this 24th day of January, 2003.

RINGERT CLARK CHARTERED

S. Bryce Farris
Attorneys for Fisheries Development Co.

CERTIFICATE OF SERVICE

I certify that on January 24th, 2003, I mailed the original and copies of this document, including all attachments to the following:

Idaho Dept. of Water Resources
Southern Region Office
222 Shoshone St. East
Twin Falls, Idaho 83301

David Barber
Natural Resource Div.
Office of Attorney General
P.O. Box 83720
Boise, ID 83720-0010

Buckeye Farms, Inc.
18335 U.S. Hwy. 30
Hagerman, Idaho 83332

David Parrish
ID. Dept. Fish & Game
P.O. Box 428
Jerome, Idaho 83338

John K. Simpson
Barker Rosholt & Simpson
P.O. Box 2139
Boise, ID 83701-2193

David B. Shaw
ERO Resources
1106 North Cole Rd., Suite C
Boise, ID 83704-8661

Ken Ellis
Aqua Life Corp.
P.O. Box 1867
Twin Falls, Idaho 83303-1867

Western Legends LC
P.O. Box 764
Ketchum, ID 83340

S. Bryce Farris

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION)
FOR PERMIT NO. 36-8785 IN THE)
NAME OF BUCKEYE FARMS, INC)
_____)

NOTICE OF PROPOSED DEFAULT ORDER

This matter having come before the Idaho Department of Water Resources (department), the department makes the following Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT

1. On October 29, 1998, Buckeye Farms, Inc. (applicant) filed Application for Permit No. 36-8785 (application) with the department proposing to appropriate 16.0 cubic feet per second of water to be diverted from Riley Creek to be used for Wildlife, Recreation, Aesthetic, and Fish Propagation purposes to be diverted year round.

2. The application was protested by Idaho Department of Fish and Game, Western Legends LLC, and Aqua Life Corporation. Intervention was granted to Fisheries Development Company.

3. On January 4, 2003, the department scheduled a pre-hearing conference in the matter to be held on January 21, 2003, in Hagerman, Idaho. At that conference the applicant and Idaho Department of Fish and Game were represented. Western Legends LLC, Aqua Life Corporation and Fisheries Development Company did not appear.

CONCLUSIONS OF LAW

1. IDAPA Rule 37.01.01700 (Rule of Procedure 700) authorizes the department to issue a Notice of Proposed Default for Failure to Appear at a scheduled pre-hearing conference.

2. The department should enter a Notice of Proposed Default for failure of Western Legends LLC, Aqua Life Corporation, and Fisheries Development Company to appear at the January 21, 2003, pre-hearing conference held in Hagerman, Idaho in connection with the above captioned matter.

ORDER

IT IS THEREFORE, HEREBY ORDERED that the department plans to enter a Default Order **SETTING ASIDE** the protests of Western Legends LLC, Aqua Life Corporation, and Fisheries Depvelopment Company as provided in IDAPA Rule 37.01.01702 (Rule of Procedure 702).

Dated this 22nd day of January, 2003.

ALLEN MERRITT
Conference Officer

CERTIFICATE OF MAILING

I hereby certify that on the 22nd day of January, 2003 a true and correct copy of the above and foregoing Notice of Proposed Default Order was forwarded with all required charges prepared, by Regular U.S. Mail to the parties listed:

ATTN DAN YORE
BUCKEYE FARMS INC
18335 US HWY 30
HAGERMAN ID 83332

KEN ELLIS
AQUA LIFE CORP
PO BOX 1867
TWIN FALLS ID 83301

JOHN K. SIMPSON
BARKER ROSHOLT & SIMPSON LLP
PO BOX 2139
BOISE ID 83701-2139

ATTN BILL LEHMAN
WESTERN LEGENDS LLC
PO BOX 764
KETCHUM ID 83340

DAVID B. SHAW
ERO RESOURCES CORP
1106 NORTH COLE RD-STE# C
BOISE ID 83704-8661

S. BRYCE FARRIS
RINGERT CLARK CHARTERED
PO BOX 2773
BOISE ID 83702

DAVID PARRISH
ID DEPT FISH & GAME
PO BOX 428
JEROME ID 83338

DAVID BARBER
NATURAL RESOURCES DIV.
OFFICE OF ATTORNEY GENERAL
PO BOX 83720
BOISE ID 83720-0010

Mary Baldwin

Mary A.. Baldwin
Administrative Assistant I

Allen Merritt
RECEIVED
JAN - 8 2003
Department of Water Resources

BEEMAN & ASSOCIATES, P.C.

Counselors and Attorneys at Law
409 West Jefferson Street
Boise, Idaho 83702-6049

Josephine P. Beeman
jo.beeman@beemanlaw.com
Dana H. Rose
dana.rose@beemanlaw.com

Phone (208) 331-0950
Fax (208) 331-0954
office@beemanlaw.com

January 7, 2003

RECEIVED
JAN 21 2003
Department of Water Resources
Southern Region

Jeff Martin
North Snake Ground Water District
152 E. Main Street
Jerome, ID 83338

RE: NSGWD and Buckeye Farms –
Riley Creek Water for Billingsley Creek Right
2001 Basin 36 Safe Harbor Agreement, Paragraph 2.6

Dear Jeff:

Buckeye Farms' July 27, 2001, letter is incorporated in the 2001 Interim Stipulated Agreement for Areas Within and Near IDWR Administrative Basin 36 as follows: "NSGWD and Buckeye agree to use their best efforts to provide twelve (12) cfs of water to Buckeye from Riley Creek by the 2002 irrigation season as contemplated in the July 2001 letter to NSGWD."

The July 27, 2001, letter is directed to "alternatives for the mitigation of senior water rights with diversions out of Billingsley Creek in the Hagerman area. Specifically, Buckeye Farms has a 20 cfs senior water right with diversion out of Billingsley Creek at the Curren Ditch." Buckeye also mentions a senior right from Weatherby Springs.

According to the *New International* Decree (relevant portions enclosed), a 10 cfs diversion from Riley Creek will completely replace Buckeye Farms' 20 cfs diversion from Billingsley Creek, but Buckeye must abandon the 1884 Billingsley Creek right if it diverts the 10 cfs from Riley Creek. The "Riley Creek" election carries an October 1, 1908, priority date. Buckeye Farms and NSGWD have discussed a 12 cfs diversion from Riley Creek to address shortages in Buckeye's 20 cfs irrigation diversion from Billingsley Creek, but it appears that neither NSGWD nor Buckeye Farms knew that a 10

cfs irrigation diversion from Riley Creek will extinguish Buckeye's 1884 Billingsley Creek irrigation right. Although, Buckeye Farms has a pending application (36-08785) to divert 16 cfs from Riley Creek (for year round wildlife, recreation, aesthetic, and fish propagation uses with a 1998 priority date), the application does not address the irrigation supply, and it would be junior to the 1908 Riley Creek option.

Sincerely,

BEEMAN & ASSOCIATES, P.C.

Jo Beeman

Josephine P. Beeman

JPB:tjw
Enclosures
cc: John Simpson (w/enc.)
John Rosholt (w/enc.)
Karl Dreher (w/enc.)
Clive Strong (w/enc.)
Z:\17802a\190\5497

139 AB

IN THE DISTRICT COURT OF THE UNITED STATES, FOR THE DISTRICT OF IDAHO, SOUTHERN DIVISION.

NEW INTERNATIONAL MORTGAGE BANK, a corporation,

Plaintiff,

-vs-

IDAHO POWER COMPANY, a corporation, et al.,

Defendants.

In Equity No. 1602

D E C R E E

[illegible] DISTRICT COURT
[illegible]

[illegible]
[illegible] D. [illegible], Clerk
By [illegible] Deputy

WHEREAS, The above entitled action having heretofore been submitted to the court upon pleadings and stipulations of fact, on file herein, and WHEREAS, the court being duly advised in the premises, and having made its findings of fact and conclusions of law;

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED, That all of the land described in the complaint of the plaintiff, and in the answers, cross-complaints, and counter-claims of the defendants and intervenors, and each of them, is semi-arid in character and requires the artificial application of water or irrigation in order to produce thereon ordinary agricultural crops; that said land is situate in what is known as the Hagerman Valley, east of and adjacent to the Snake River, and that the same lies between the rim rock, or cliff wall, to the east of the Snake River and said Snake River; that the subsoil of said valley underlying said valley and all of the land is shattered, fissured lava flow, upon which has been deposited layers of clay and gravel, interspersed with water worn boulders, fragments of rock, and the soil is composed mainly of decomposed lava rock, oxidized lava rock and sand, and that owing to the nature of the soil and subsoil, the coarse texture and the mechanical composition of the soil and its free drainage, the said land and all of the land

in Hagerman Valley requires a large amount of water, as hereinafter specified, for its successful irrigation and production thereon of ordinary agricultural crops.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED, That said land, and all of the same, is situated in what is known as the Hagerman Valley, in Gooding County, Idaho, excepting certain lands of the Idaho Power Company situated on the south side of Snake River, which lands are in Twin Falls County, Idaho; said Hagerman Valley being a small valley or cove on the east side of the Snake River between "Thousand Springs" on the south and "Lower Salmon Falls" on the north, comprising approximately 16,000 acres of land lying between the rim rock on the east and the Snake River on the west; that in the land, territory, and country immediately to the east of said Hagerman Valley there is underground flowage of water, flowing towards the Snake River, which comes to the surface in numerous springs, seeps, and trickles along said rim rock, and in numerous and divers other springs located in the said Hagerman Valley, and that said underground flowage of water is the common source and supply of two creeks situated in the Hagerman Valley, one commonly known as "Riley Creek", which said stream flows in a southwesterly direction and empties into Snake River, and the other commonly known as "Billingsley Creek", which said stream flows in a northwesterly direction and empties into Snake River, said Riley Creek and said Billingsley Creek being the natural drainage and waterways into which the waters afforded by said seeps, rivulets, springs and underground flow naturally drain and are conveyed into the Snake River; and that the said Riley Creek and Billingsley Creek have the same source, that is to say, that the waters of both of said creeks have their origin in the underground flowage of water flowing beneath the lavas in a generally westerly direction and making their appearance as seeps, trickles, rivulets and springs on the

rim rock bounding said Hagerman Valley on the east and also in said valley, and that the said Riley Creek and Billingsley Creek are a part of the same drainage system, and that interference with the waters supplying the seeps, trickles, rivulets and springs supplying Riley Creek is an interference with the natural flow of Billingsley Creek, and that interference with the waters supplying the seeps, trickles, rivulets and springs supplying Billingsley Creek is an interference with the natural flow of said Riley Creek.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED, That of and from the waters comprising and constituting the source and supply of Billingsley Creek and Riley Creek and the waters of the seeps, springs, and rivulets so mentioned and above set out, the plaintiff, New International Mortgage Bank, be, and hereby is, ordered, adjudged, and decreed to have the use of, and the right to use for, the irrigation of its hereinafter described land and for domestic and other purposes thereon, the following amounts of water, to-wit:

Twelve second feet of the waters of Riley Creek, with a priority of May 1, 1883, said water to be diverted by means of a dam constructed in, and a ditch leading from, said Riley Creek; the point of diversion of said ditch being located at a point in the SW¼ SE¼, Sec. 1, Twp. 8 South, Range 13 E. B. M., from which the corner of Sections 1, 2, 35, and 36, Twps. 7 and 8 South, Range 13 E. B. M. bears north 60° 12' west 4365 feet distant;

Also 12 second feet of the waters of Riley Creek, with a priority of October 1, 1908, the point of diversion of said ditch being located near the head of Riley Creek, that is to say, where the main body of water comprising said Riley Creek emerges from the hillside in the form of springs, said springs being sometimes referred to as the Thompson or Tucker Spring, which said point of diversion is located in the SE¼ SE¼, Sec. 36, Twp. 7 South, Range 13 E. B. M., from which the corner of Sections 1, 2, 35, and 36, Twp. 7

and 8 South, Range 13 E. B. M. bears south 75° 50' west 4435 feet distant;

Also 20 second feet of the waters flowing in Billingsley Creek, with a date of priority of September 10, 1884, the same being diverted by means of a dam in, and a ditch leading from, said Billingsley Creek, the point of diversion being in the SE¼ NE¼, Sec. 11, Twp. 7 South, Range 13 E. B. M., from which the quarter section corner common to Sections 11 and 12, Twp. 7 South, Range 13 E. B. M. bears south 47° 22' east 718 feet distant.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED, That the amounts of water heretofore set out, diverted from said natural water supply at the points of diversion heretofore mentioned and set out, are necessary for the proper irrigation and cultivation of, and that the same is appurtenant to the following, described land of the plaintiff, viz:

SW¼ of NE¼; NW¼ of SE¼; S½ of NW¼; N½ of SW¼, Section 27; SE¼ of NE¼; NE¼ of SE¼; Lots 4, 5, 8, and 9, all in Section 28; Lots 1, 4, 5, and 8; SE¼ of SE¼, all in Sec. 33; Lots 1, 2, 3, 4, 5, and 7; SE¼ of NW¼; NE¼; N½ of NW¼, all in Sec. 34; SW¼ of NW¼ and NW¼ of SW¼ of Section 35, all in Township 7 South, Range 13 E. B. M. Terrace Bar, Big Foot Bar, Union Bar and Comstock Placer Mining Claims according to plat of Mineral survey No. 1, Lot 37, filed in U. S. Land Office at Hailey, Idaho, November 20, 1884; Starr Hunt, Jack Rabbitt and Fractional Terrace Bar Placer Mining Claims according to plat of mineral survey No. 801, Lot 38, filed in U. S. Land Office at Hailey, Idaho, January 2, 1890; all in Township 7 South, Range 13, E. B. M. All islands in Snake River South of said Section 33, Township 7 South, Range 13 E. B. M., excepting tracts 16, 27, 37, 124, and 125 of Map of Buckeye Ranch recorded in Book 1 of Plats, page 44, in the office of the County Recorder of Lincoln County, Idaho.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED, That said plaintiff may, and is hereby given the right to change its point of diversion of the waters diverted from Billingsley Creek at the point of diversion hereinbefore described and set out to that certain point of diversion on Riley Creek heretofore designated and set out as the Tucker or Thompson Spring diversion, or elsewhere on Riley Creek;

and that if the said plaintiff elects so to do, that it may change the point of diversion from said Billingsley Creek as aforesaid to said point of diversion above mentioned and set out, or elsewhere on said Riley Creek; and that if the plaintiff does so change its said point of diversion as aforesaid, then and in that instance it does expressly waive any and all claims to the waters of Billingsley Creek diverted at the point of diversion aforesaid, and shall receive in lieu thereof 10 second feet of the waters of Tucker or Thompson Spring, with a date of priority of October 1, 1908, from said Riley Creek, and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, That in case said plaintiff so exercises said right, that the diversion of the said additional 10 second feet of the waters of Riley Creek at Thompson or Tucker Spring, or elsewhere on Riley Creek, shall be made at the cost and expense of said plaintiff, and shall not interfere with the diversion by the Idaho Power Company and other parties of the waters of said Tucker or Thompson Spring, which diversions shall be at all times considered entitled to a full diversion before the plaintiff herein shall be entitled to divert said additional 10 second feet of the waters of Riley Creek at said Thompson or Tucker Spring.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED, That except as otherwise expressly provided herein, the right hereby given to any of the parties hereto to divert water from the channel of said Billingsley Creek shall not be deemed a right to divert water from the channel of said Riley Creek and the right to divert water from the channel of said Riley Creek shall not be deemed a right to divert water from the channel of said Billingsley Creek.

RE: Application for Permit No. 36-8785 (Buckeye Farms, Inc.)

PLACE: Conference Rm - Snake River Grill Restaurant; Hagerman ID

DATE: **Tuesday - January 21, 2003**

CONFERENCE OFFICER: Karl Dreher

ASSISTED BY: Allen D. Merritt

ROSTER OF ATTENDANCE

NAME	ADDRESS	REPRESENTING
Mike McDonald	P.O. Box 428 Jerome	IDFG
Scott Gamo	"	IDFG
DAN YORE	18335 U.S. 30 (Hag.)	Buckeye Farms, Inc.
John Simpson	205 N 10th Boise	Buckeye Farms, Inc.
Karl Dreher	1301 North Orchard	IDWR
	Boise, Idaho	
David J. Barber	700 W Jefferson St.	Deputy Attorney General
	Boise ID	Represents IDF&G

BEFORE THE DEPARTMENT OF WATER OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO. 36-8785 BUCKEYE FARMS, INC., Applicant Aqua Life Inc, Western Legends LC, ID Dept. of Fish & Game, Protestants Fisheries Development Co, Intervenor	NOTICE OF PRE-HEARING CONFERENCE SOURCE: Riley Creek Tributary to Snake River COUNTY: Gooding

On October 29, 1998 Buckeye Farms, Inc., applicant, filed with the Department of Water Resources an Application to Appropriate the Public Waters of the State of Idaho. The Department has received protests against the approval of said application from the above captioned protestants. In addition, a Petition for Intervention was granted to Fisheries Development Co. on March 1, 1999.

The Department has set the matter of protest for conference on **Tuesday - January 21, 2003 commencing at 2:30 p.m. in the Meeting Room, Snake River Grill Restaurant, Corner of State and Hagerman Streets; Hagerman 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 4th day of January, 2003.

Allen D. Merritt, P.E.
Regional Manager

CERTIFICATE OF MAILING

I hereby certify that on the 7th day of January, 2003 a true and correct copy of the above and foregoing Notice of Pre-hearing Conference was forwarded with all required charges prepared, by Regular U.S. Mail to the parties listed:

Mary A. Baldwin

Mary A. Baldwin
Administrative Assistant I

ATTN DAN YORE
BUCKEYE FARMS INC
18335 US HWY 30
HAGERMAN ID 83332

JOHN K. SIMPSON
BARKER ROSHOLT & SIMPSON LLP
PO BOX 2139
BOISE ID 83701-2139

DAVID B. SHAW
ERO RESOURCES CORP
1106 NORTH COLE RD-STE# C
BOISE ID 83704-8661

DAVID PARRISH
ID DEPT FISH & GAME
PO BOX 428
JEROME ID 83338

KEN ELLIS
AQUA LIFE CORP
PO BOX 1867
TWIN FALLS ID 83301

ATTN BILL LEHMAN
WESTERN LEGENDS LLC
PO BOX 764
KETCHUM ID 83340

S. BRYCE FARRIS
RINGERT CLARK CHARTERED
PO BOX 2773
BOISE ID 83702

DAVID BARBER
NATURAL RESOURCES DIV.
OFFICE OF ATTORNEY GENERAL
PO BOX 83720
BOISE ID 83720-0010

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

January 7, 2003

ATTN CURT MARTIN
SNAKE RIVER GRILL RESTAURANT
CORNER OF STATE & HAGERMAN STREETS
HAGERMAN ID 83332

Dear Mr. Martin:

This is a follow-up to our telephone conversation on this date to confirm the reservation of the Meeting Room for a meeting to be held by this office on **Tuesday - January 21, 2003 from 2:00 - 4:00 p.m.**

We understand the rental charge for the room is $30.00 and will provide payment at the time of the meeting.

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

Merritt, Allen

From: Merritt, Allen
Sent: Thursday, February 28, 2002 2:28 PM
To: Young, Norm
Subject: Buckeye Farms Pre-hearing conference

I've called all the parties and either talked to them directly or left word on their answering machines informing them that the conference has been cancelled.

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

2/28/02

Pam & Michael:

The pre-hearing conference for Buckeye's application for permit 36-08785 is cancelled. We will re-schedule.

Thanks

Allen Merritt

RE: Application for Permit No. 36-8785 (Buckeye Farms, Inc.)

PLACE: Conference Rm-Hagerman Valley Inn; Hagerman ID

DATE: **Friday-March 1, 2002**

CONFERENCE OFFICER: Allen D. Merritt

ASSISTED BY:

ROSTER OF ATTENDANCE

NAME	ADDRESS	REPRESENTING

Cancelled

MEMORANDUM

DATE: February 15, 2002

TO: File# 36-8785

FROM: Mary A. Baldwin, Southern Region

SUBJECT: Legal Representative from the Attorney General's Office

I received a telephone call today from Kelly Jennings who previously was the Secretary to Peter Ampe at the Attorney General's Office.

She indicated the possibility of the Attorney currently representing the ID Fish & Game might be David Barber and said she would call them requesting that they contact the Department with some updated information.

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
1341 Fillmore Street, Suite 200
Twin Falls, Idaho 83301-3380

RETURN SERVICE REQUESTED

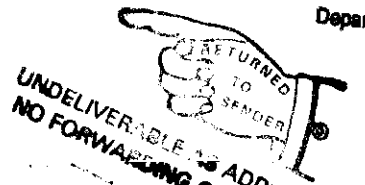
Sheryl Chapman
1106 N Cole Rd Ste C
83704-8661

Tele 373-7983

Geo H Resources



RECEIVED
FEB 07 2002
Department of Water Resources
Southern Region



DAVID B. SHAW
ERO RESOURCES CORP
2309 N. MTN VIEW DR-STE 174
BOISE ID 83706
83706X1071

BEFORE THE DEPARTMENT OF WATER OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO. 36-8785 BUCKEYE FARMS, INC., Applicant Aqua Life Inc, Western Legends LC, ID Dept. of Fish & Game, Protestants Fisheries Development Co, Intervenor	NOTICE OF PRE-HEARING CONFERENCE SOURCE: Riley Creek Tributary to Snake River COUNTY: Gooding

On October 29, 1998 Buckeye Farms, Inc., applicant, filed with the Department of Water Resources an Application to Appropriate the Public Waters of the State of Idaho. The Department has received protests against the approval of said application from the above captioned protestants. In addition, a Petition for Intervention was granted to Fisheries Development Co. on March 1, 1999.

The Department has set the matter of protest for conference on **Friday-March 1, 2002 commencing at 9:00 a.m. in the Conference Room, Hagerman Valley Inn, 661 Frogs' Landing; Hagerman 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 4th day of February, 2002.

Allen D. Merritt, P.E.
Regional Manager

CERTIFICATE OF MAILING

I hereby certify that on the 4th day of February, 2002 a true and correct copy of the above and foregoing Notice of Pre-hearing Conference was forwarded with all required charges prepared, by Regular U.S. Mail to the parties listed:

Mary A. Baldwin

Secretary

ATTN DAN YORE
BUCKEYE FARMS INC
18335 US HWY 30
HAGERMAN ID 83332

ATTN MICHAEL MC CARTHY
WESTERN LEGENDS LC
PO BOX 5656
TWIN FALLS ID 83303

JOHN K. SIMPSON
BARKER ROSHOLT & SIMPSON LLP
PO BOX 2139
BOISE ID 83701-2139

KEN ELLIS
AQUA LIFE CORP
PO BOX 1867
TWIN FALLS ID 83303-1867

DAVID B. SHAW
ERO RESOURCES CORP
2309 N. MOUNTAIN VIEW DR
SUITE 174
BOISE ID 83706

S. BRYCE FARRIS
RINGERT CLARK CHARTERED
PO BOX 2773
BOISE ID 83702

DAVID PARRISH
ID DEPT FISH & GAME
PO BOX 428
JEROME ID 83338

KELLY R. JENNINGS
NATURAL RESOURCES DIV.
OFFICE OF ATTORNEY GENERAL
PO BOX 83720
BOISE ID 83720-0010

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF PETITION TO INTERVENE IN PROTESTED APPLICATION FOR PERMIT NOS. 36-08783, 36-08784, AND 36-08785 IN THE NAME OF BUCKEYE FARMS, INC., Applicant	**ORDER GRANTING PETITION TO INTERVENE**

On February 17, 1998 Buckeye Farms, Inc. (Applicant) filed with the Department of Water Resources (department) Application for Permit Nos. 36-08783 and 36-08784; on October 29, 1998 the Applicant filed Application for Permit No. 36-08785.

Commencing on January 19, 1999 multiple protests were received by the Department raising all issues described in §42-222.

On February 17, 1999 Fisheries Development Co. (petitioner), by their attorneys of record, Ringert Clark, Chartered submitted to the department a petition for an order to intervene in the above described matters as authorized in Rule of Procedure IDAPA 37.01.01350 (Rule 350).

After reviewing said protestants' original protests and said petitioner's petitions it is found that the petitioner has shown sufficient interest in the matter without unduly broadening the issues.

ORDER

IT IS THEREFORE HEREBY ORDERED that the petition of Fisheries Development Co., requesting intervention in any conference and/or hearing scheduled by the department in connection with the above captioned matters is GRANTED.

Dated this 1st day of March, 1999.

Allen Merritt
Hearing Officer

CERTIFICATE OF MAILING

I hereby certify that on the 1st day of March, 1999 a true and correct copy of the foregoing Order Granting Intervention was forwarded with all required charges prepared, by regular U.S. Mail to the parties listed:

Mary Baldwin
Secretary

BUCKEYE FARMS INC
18335 US HWY 30
HAGERMAN ID 83332

JOHN A ROSHOLT ESQ
ROSHOLT ROBERTSON & TUCKER
PO BOX 1906
TWIN FALLS ID 83303-1906

DAVID B SHAW
2309 N MOUNTAIN VIEW DR
SUITE 174
BOISE ID 83706

JERRY R FOWLER
919 JUSTICE GRADE
HAGERMAN ID 83332

RICHARD UPPIANO &
GRETCHEN UPPIANO
929 JUSTICE GRADE
HAGERMAN ID 83332

PETER STURDIVANT
PO BOX 968
HAILEY ID 83333-0968

W H MOSELEY
PO BOX 272
HAGERMAN ID 83332

PATSY SMITH DUNN
18 BLUE SPRUCE DR
HAGERMAN ID 83332

CARL H NELLIS
ID DEPT FISH & GAME
PO BOX 428
JEROME ID 83338

MICHAEL BRANCHFLOWER
PO BOX 392
WENDELL ID 83355:

VERNITA TALBOTT
1354 N E 5TH ST
BEND OR 97701

ATTN MICHAEL MC CARTHY
WESTERN LEGENDS LC
PO BOX 5656
TWIN FALLS ID 83303-5656

KEN ELLIS
AQUA LIFE CORP
PO BOX 1867
TWIN FALLS ID 83303-1867

ROBERT M STROM &
DOROTHY E STROM
931 JUSTICE GRADE
HAGERMAN ID 83332

FISHERIES DEVELOPMENT CO
C/O RINGERT CLARK CHARTERED
PO BOX 2773
BOISE ID 83702

PETER J AMPE
DEPUTY ATTORNEY GENERAL
PO BOX 83720
BOISE ID 83720-0010

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
ALAN G. LANCE

RECEIVED
FEB 24 1999
Department of Water Resources
Southern Region

February 23, 1999

Allen Merritt
Idaho Department of Water Resources
1341 Fillmore St., Ste. 200
Twin Falls, ID 83301

Re: Water Right Application Nos. 36-08783, 36-08784, 36-08785 & 36-08786

Dear Mr. Merritt:

Enclosed for filing in the above referenced matters is the original **NOTICE OF APPEARANCE**.

If I have forwarded this document to you in error, please advise me at your earliest convenience.

Thank you for your assistance.

Very truly yours,

KELLY R. JENNINGS
Natural Resources Division

Enclosures
L9054NJA.DOC

Natural Resources Division
P.O. Box 83720, Boise, Idaho 83720-0010
Telephone: (208) 334-2400, FAX: (208) 334-2690
Located at 700 W. Jefferson Street, Suite 210

RECEIVED
FEB 2 4 1999
Department of Water Resources
Southern Region

ALAN G. LANCE
ATTORNEY GENERAL

CLIVE STRONG
Deputy Attorney General
Chief, Natural Resources Division

PETER J. AMPE
Deputy Attorney General
Natural Resources Division
700 W. Jefferson Street, Room 210
P. O. Box 83720
Boise, ID 83720-0010
Telephone: (208) 334-2400
FAX: (208) 334-2690

Attorneys for Idaho Department of Fish and Game

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NOS. 36-08783, 36-08784 and 36-08785 In the name of BUCKEYE FARMS, INC.	**NOTICE OF APPEARANCE**
And	
IN THE MATTER OF APPLICATION FOR PERMIT NO. 36-08786 In the name of WESTERN LEGENDS	

To all parties in the above-captioned proceeding:

YOU WILL PLEASE TAKE NOTICE that Peter J. Ampe, Deputy Attorney General for the State of Idaho, hereby enters his appearance as attorney of record on behalf of Protestant, Idaho Department of Fish and Game. Please serve all copies of correspondence and/or pleadings to:

Peter J. Ampe
Deputy Attorney General
P.O. Box 83720
Boise, Idaho 83720-0010

ORIGINAL

DATED this 23rd day of February 1999.

ALAN G. LANCE
Attorney General

PETER J. AMPE
Deputy Attorney General
Natural Resources Division

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of February, 1999, I caused to be served a true and correct copy of the NOTICE OF APPEARANCE upon all parties of record in this proceeding by placing same in the United States mail, postage prepaid, addressed as follows:

Buckeye Farms, Inc.
18335 U.S. Hwy. 30
Hagerman, ID 83332

John A. Rosholt
Rosholt Robertson & Tucker
P.O. Box 1906
Twin Falls, ID 83303-1906

Ken Ellis
Aqua Life Corp.
P.O. Box 1867
Twin Falls, ID 83303-1867

Peter Sturdivant
P.O. Box 606
Hailey, ID 83333-0606

W.H. Moseley
P.O. Box 272
Hagerman, ID 83332-0272

Patsy Smith Dunn
18 Blue Spruce Dr.
Hagerman, ID 83332

Michael Branchflower
P.O. Box 392
Wendell, ID 83355-0392

Vernita Talbott
1354 NE 5th St.
Bend, OR 97701

Western Legends LLC
P.O. Box 5656
Twin Falls, ID 83303-5656

Robert M. Strom
931 Justice Grade
Hagerman, ID 83332

Daniel V. Steenson
Charles L. Honsinger
S. Bryce Farris
Ringert Clark, Chtd.
P.O. Box 2773
Boise, ID 83702-2773

Richard Uppiano
Gretchen Uppiano
929 Justice Grade
Hagerman, ID 83332

Jerry R. Fowler
919 Justice Grade
Hagerman, ID 83332

PETER J. AMPE
Deputy Attorney General
P9054naa.doc

Daniel V. Steenson
Charles L. Honsinger
S. Bryce Farris
Ringert Clark, Chartered
P.O. Box 2773
Boise, ID 83702
(208)342-4591

RECEIVED
FEB 16 1999
Department of Water Resources
Southern Region

Attorneys for Fisheries Development Co.

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO. 36-08785 IN THE NAME OF BUCKEYE FARMS, INC.	NOTICE OF PETITION TO INTERVENE

Fisheries Development Co., by and through its attorneys of record Ringert Clark, Chartered, hereby files this Petition to Intervene in the protested matter of Application for Permit Number 36-08785, filed in the name of Buckeye Farms, Inc. Fisheries Development Co. is located at 1301 Vista, Boise, Idaho 83705.

Fisheries Development Co. owns real property upstream from Buckeye Farms' proposed appropriations of Billingsley Creek, has certain water rights which flow from Billingsley Creek, and is concerned about any new appropriations from Billingsley Creek. Thus, Fisheries Development Co. has a direct and substantial interest in this proceeding and wishes to have an opportunity to comment on the application for permit as a party to this proceeding, to receive copies of all pleadings and papers filed in this matter, and, as necessary, to participate as a full party.

Pursuant to IDAPA, Rule 37.01.01.200, this Notice also constitutes notice of appearance of the above attorneys in this matter for Fisheries Development Co.

DATED this 11th day of February, 1999.

RINGERT CLARK CHARTERED

S. Bryce Farris
Attorneys for Fisheries Development Co.

CERTIFICATE OF SERVICE

I certify that on February 12, 1999, I mailed the original and copies of this document, including all attachments to the following:

Idaho Dept. of Water Resources
Southern Region Office
222 Shoshone St. East
Twin Falls, Idaho 83301

Buckeye Farms, Inc.
18335 U.S. Hwy. 30
Hagerman, Idaho 83332

Carl H. Nellis
ID. Dept. Fish & Game
P.O. Box 428
Jerome, Idaho 83338

John A. Rosholt Esq.
Rosholt Robertson & Tucker
P.O. Box 1906
Twin Falls, Idaho 83303-1906

David B. Shaw
2309 N. Mountain View Dr.
Suite 174
Boise, Idaho 83706

Ken Ellis
Aqua Life Corp.
P.O. Box 1867
Twin Falls, Idaho 83303-1867

Western Legends LC
P.O. Box 5656
Twin Falls, Idaho 83303-5656

S. Bryce Farris

RECEIPT
For Monies Paid
to the
Idaho Department of Water Resources

Receipt No: S021780

Date: 2/16/1999
Time: 13:44:49

Received From: RINGERT CLARK CHARTERED

Type of Payment		Program Acct	Amount
NTERVENE PER 36-08783,-08784,-08785	64103	229 21 1155	75.00

CHECK 15969

Total $ 75.00

Region: SOUTHERN

Signature: Jennifer Sutterlee

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

February 12, 1999

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

BUCKEYE FARMS INC
18335 US HWY 30
HAGERMAN ID 83332

RE: APPLICATIONS FOR PERMIT NOS. 36-08783 through 36-08785

Dear Applicants:

Enclosed are copies of protests filed against the above referenced applications.

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 applications are considered contested cases and subject to the Rules of Procedure adopted by the Department. Also, please note that the Department may consider holding joint pre-hearing conferences &/or hearings on the following contested cases:

*Transfer No. 4930 (36-00015 & 36-00018) by Buckeye Farms
*Applications 36-08783 through 36-08785 by Buckeye Farms
*Application 36-08786 by Western Legends

Please let me know if this would be feasible. 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,

MB for

Allen D. Merritt, P.E.
Southern Region Manager

AM:MB

Enclosures

cc:

JOHN A ROSHOLT ESQ
ROSHOLT ROBERTSON & TUCKER
PO BOX 1906
TWIN FALLS ID 83303-1906

DAVID B SHAW
2309 N MOUNTAIN VIEW DR
SUITE 174
BOISE ID 83706

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 12, 1999

KEN ELLIS
AQUA LIFE CORP
PO BOX 1867
TWIN FALLS ID 83303-1867

RE: APPLICATIONS FOR PERMIT NO. 36-08783 through 36-08785 filed in the name of Buckeye Farms, Inc. **AND** APPLICATION FOR PERMIT NO. 36-08786 filed in the name of Western Legends

Dear Mr. Ellis:

Your protest against the approval of the above referenced applications have 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 Department may consider holding joint pre-hearing conferences &/or hearings on the following contested cases:

*Transfer No. 4930 (36-00015 & 36-00018) by Buckeye Farms
*Applications 36-08783 through 36-08785 by Buckeye Farms
*Application 36-08786 by Western Legends

Please let me know if this would be feasible. Also, please note that the applications are considered as contested cases 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:

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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,

AM for

Allen D. Merritt, P.E.
Southern Region Manager

AM:MB
Enclosure
cc:
JOHN A ROSHOLT ESQ
ROSHOLT ROBERTSON & TUCKER
PO BOX 1906
TWIN FALLS ID 83303-1906

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

February 8, 1999

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

CARL H NELLIS
ID DEPT FISH & GAME
PO BOX 428
JEROME ID 83338

RE: APPLICATIONS FOR PERMIT NO. 36-08783 through 36-08785 filed in the name of Buckeye Farms, Inc. **AND** APPLICATION FOR PERMIT NO. 36-08786 filed in the name of Western Legends

Dear Protestant(s):

Your protest against the approval of the above referenced applications have 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 applications are considered as contested cases 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

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 5, 1999

ATTN MICHAEL MC CARTHY
WESTERN LEGENDS LC
PO BOX 5656
TWIN FALLS ID 83303-5656

RE: APPLICATIONS FOR PERMIT NO. 36-08783 through 36-08785 filed in the name of Buckeye Farms, Inc.

Dear Protestant(s):

Your protest against the approval of the above referenced applications have 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 applications are considered as contested cases 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

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

January 27, 1999

Chris Doyle
2210 Annett Ct
Boise, ID 83705

RE: Applications for permit 36-08783 through 36-08786

Dear Mr. Doyle:

Our office has received your letter dated 1/25/99 requesting to be a witness at any hearing for the above referenced applications. I understand Mary Baldwin from our office has previously provided you copies of the "Rules of Procedure" and "Rules for Water Appropriation". Please refer to those rules in understanding the following:

Currently the above referenced applications have all been protested and are considered contested cases. For you to be called as a witness it appears to me your options include:

-You may petition to intervene into each contested case. This would require a $25 fee for each case. If your petition is allowed in full, you would have full party status; thus, you could participate in pre-hearing conferences, you could testify and ask questions of other witnesses and participate in objections at any hearing, petition for reconsideration and file appeals of decisions.

or

-You may contact other parties in the cases and have them call you as a witness at any hearing. If they agreed, you could testify on their behalf. This option would not require you paying any fees; however, you would not be considered a party or allowed to ask questions of other witnesses or participate in objections, petitions for reconsideration or appeals.

As a courtesy, I will include your name on the list for notification of any scheduled hearing. If you wish to intervene please refer to the "Rules of Procedure".

If you have questions, please feel free to contact our office.

Sincerely,

Allen Merritt, PE
Southern Region Manager

CC: Glen Saxton - IDWR

Mr. Allen Merritt
Idaho Dept of Water Resources
1341 Filmore St
Suite 200
Twin Falls, Id 83301

I

1/25/99

RECEIVED
JAN 26 1999
Department of Water Resources
Southern Region

Dear Mr. Merritt

I would like to state our organization's opposition to the four applications to divert water from Billingsly and Riley Creeks in the Twin Falls water district. These are applications 36-087-83-08785 by Buckeye Farms and 36-08786 by Western Legends.

These waters are premium quality spring creeks with abundant populations of native rainbow trout. The quantity and quality of these creeks have already been seriously degraded by water diversions by private trout rearing farms.

As you know, Idaho has been ordered to develope water quality improvement plans for nearly 1,000 stream segments that reach nearly every county in Idaho. To allow any further water loss and degradation of these creeks and the nearby Snake River that they flow into would be contrary to any future plans for water quality in these waters and a great loss to the fish and wild life and recreational values that are associated with the Hagerman Valley.

RECEIVED
JAN 26 1999
Department of Water Resources
Southern Region

II

I understand that there would likely be a public hearing regarding these applications to be held sometime in the future in Boise.

I respectfully request to be allowed to appear as a witness on behalf of Boise Valley Fly Fishermen at this hearing.

Sincerely Yours,

Christopher P. Doyle

Boise Valley Fly Fishermen
Conservation Chairman

Chris Doyle
2210 Annett Ct.
Boise, ID 83705

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
NOTICE OF PROTEST

RECEIVED
JAN 2 5 1999
Department of Water Resources
Southern Region

Matter being protested: Application for Permit Ident. No. 36-09785
Applicant: Buckeye Farms, Inc.

Name of Protestant: Western Legends LC
Service Mailing Address: P. O. Box 5656
Twin Falls, ID 83303
Service telephone No. (208) 837-6641
Fax: (208) 837-9165

RECEIVED
JAN 25 1999
Department of Water Resources
Southern Region

Basis of protest:

Applicant, Buckeye Farms, Inc. currently has submitted to the IDWR eight (8) other applications for which Permits have been issued, but for which the IDWR has not yet issued licenses. Further, in connection with these eight (8) Permits (see attached list), there has been no "written documentation showing how the water from these permits has been beneficially applied". **Idaho Code 42-219** states that *"License shall be issued...and shall state...the quantity of water which may be used, which in no case shall be an amount in excess of the amount that has been beneficially applied."*

At least one or more of these permits is from the same water source as this new application. Until such time as the IDWR has completed the licensing process on the outstanding applications, no new permits should be issued since the quantity of water "beneficially applied" has not been determined.

Applicant further states that the purpose for this new application is for water to "enhance wildlife, recreation, aesthetic and fish propagation in existing facilities."

Idaho Code provides that only an amount of water that can be beneficially applied can be licensed. For the IDWR to issue new permits for water to "enhance" wildlife, recreation, aesthetic and fish propagation in existing facilities" would be a violation of their fiduciary duty in accordance with Idaho State Code. Before the IDWR issues permits for the outstanding permits, IDWR needs to develop and implement specific standards to determine that the water is beneficially applied.

Since the IDWR has not yet established a criteria for establishing a wildlife claim, how can the IDWR possibly issue a permit to "enhance" "wildlife".

In connection with the applications directly effecting Billingsley Creek, any new permits will jeopardize the quality and quantity of water remaining in Billingsley Creek.

What would resolve your protest?

1. IDWR develop standards for quantifying amount of water beneficially applied for all existing Applications for Licenses for water use.
2. IDWR completing pending permits and issuing licenses based on Standards developed in number 1 above.
3. Determination, after items 1 and 2, quantifying amount of water which would be needed in "existing facilities, if any, for beneficial application" under new permit applications.

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 this date served a copy of this protest upon the applicant by depositing a copy hereof in the United States mail addressed to applicant at 18335 U.S. Highway 30, Hagerman, ID 83332.

Signed this 25th day of January, 1999.

PROTESTANT: Western Legends LC

By _____
Michael McCarthy, Co-Manager

Received by J G Stanton 1-25-99 Receipt #5021753

PERMITTED WATER - (amount beneficially applied - not yet determined by the IDWR - therefore no licenses have been issued)

WATER PERMIT	PRIORITY	USE	PERIOD	AMOUNT	SOURCE	PT/Delivery
36-07739	08/01/1977	Fish	01/01-12/31	12.00 cfs	Billingsly	Buckeye
36-08335	09/24/1987	W/R/A	01/01-12/31	12.00 cfs	Billingsly	Buckeye
36-07740	08/01/1977	Fish	01/01-12/31	10.00 cfs*	Weatherby	North/Southpipeline
36-08728	09/24/1987	W/R/A	01/01-12/31	6.5 cfs*	Weatherby	North/South pipeline
36-07741	08/01/1977	Fish	01/01-12/31	24.00 cfs**	Riley Creek	Hunt Ditch
36-08729	09/24/1987	W/R/A	01/01-12/31	24.00 cfs**	Riley Creek	Hunt Ditch
36-07742	08/01/1977	Fish	01/01-12/31	20.00 cfs***	Billingsley/Curran	North/South pipeline
36-08730	09/24/1987	W/R/A	01/01-12/31	20.00 cfs***	Billingsley/Curran	North/South pipeline

The total combined rate of diversion under Right 36-07740 and Right 36-08728 shall not exceed 6.5 cfs.

The total combined rate of diversion under Right 36-07741 and Right 36-08729 shall not exceed 24.0 cfs.

****The total combined rate of diversion under Right 36-07742 and Right 36-08730 shall not exceed 20.0 cfs. This permit is subject to the agreement dated 7/18/88 (which restricts the use of water from Feb-May to 10 cfs or the one-half of the lesser amount being received by Buckeye during that period)***

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
NOTICE OF PROTEST

RECEIVED
JAN 27 1999
Department of Water Resources
Southern Region

...may be used to file a protest with the department under sections 42-108B, 42-203A, 42-203...42-215, 42-222 and ...Idaho Code. The department will also accept a timely protest not completed on this form if it contains the same ...tion.

Matter being protested 36- 08785

Name of protestant Aqua Life Inc.

Protestant's representative for service (If different than protestant)

Service mailing address Magic Valley Labs 210 Addison Ave Box 18670 Twin Falls 83301

Service telephone no. 733-4250

Basis of protest (including statement of facts and law upon which the protest is based)

See attached

(additional pages may be attached to describe the nature of the protest)

What would resolve your protest?

See attached

A good understanding what IDWR is doing running these to start with

I hereby, acknowledge that if I, or my designated representative, fails to appear at any regularly ...eduled conference or hearing in the matter of which I have been notified at the address above, the ...partment may issue a notice of proposed default against me in this matter for failure to appear. I also ...ify that I have served a copy of this protest upon the applicant.

Signed this 25th day of Jan, 19 99

Aqua Life Corp by [illegible]
PROTESTANT

[illegible]
PROTESTANT'S REPRESENTATIVE

NOTE:

A protestant is required to timely file a protest with the department together with a $25.00 prot fee for each application being protested in order for the protestant to be considered a full party by department. In addition, the department's Rule of Procedure, IDAPA 37.01.01203, requires a protest 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 application number such as "Application for Permit No. _____ in the name of _____" "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 protest form is signed by more than one person, the hearing officer will consider the first signer as official protestant and the representative for service of documents.

3. If the protestant is represented by an attorney or other authorized representative, show representative's name. The department then will serve documents on the representative and upon protestant if specifically requested.

4. Show the address where the department is to serve the documents. This should be the add 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 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 01/25/99 Time 4:50

$25.00 fee Receipted by C. SKINNER # 021757 Date 01/25/99

Basis of protest:

Applicant, Buckeye Farms, Inc. currently has submitted to the IDWR eight (8) other applications for which Permits have been issued, but for which the IDWR has not yet issued licenses. Further, in connection with these eight (8) Permits (see attached list), there has been no "written documentation showing how the water from these permits has been beneficially applied". **Idaho Code 42-219** states that *"License shall be issued...and shall state...the quantity of water which may be used, which in no case shall be an amount in excess of the amount that has been beneficially applied."*

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Applicant further states that the purpose for this new application is for water to "enhance wildlife, recreation, aesthetic and fish propagation in existing facilities."

Idaho Code provides that only an amount of water that can be beneficially applied can be licensed. For the IDWR to issue new permits for water to "enhance" wildlife, recreation, aesthetic and fish propagation in existing facilities" would be a violation of their fiduciary duty in accordance with Idaho State Code. Before the IDWR issues permits for the outstanding permits, IDWR needs to develop and implement specific standards to determine that the water is beneficially applied.

Since the IDWR has not yet established a criteria for establishing a wildlife claim, how can the IDWR possibly issue a permit to "enhance" "wildlife".

In connection with the applications directly effecting Billingsley Creek, any new permits will jeopardize the quality and quantity of water remaining in Billingsley Creek.

What would resolve your protest?

1. IDWR develop standards for quantifying amount of water beneficially applied for all existing Applications for Licenses for water use.
2. IDWR completing pending permits and issuing licenses based on Standards developed in number 1 above.
3. Determination, after items 1 and 2, quantifying amount of water which would be needed in "existing facilities, if any, for beneficial application" under new permit applications.

IDAHO FISH & GAME
MAGIC VALLEY REGION
868 East Main Street
P.O. Box 428
Jerome, Idaho 83338-0428

Dirk Kempthorne / Governor
Stephen P. Mealey / Director

January 20, 1999

RECEIVED
JAN 2 2 1999
Department of Water Resources
Southern Region

Mr. Allen Merritt
Idaho Dept. of Water Resources
1341 Fillmore Street, Suite 200
Twin Falls, Idaho 83301-3380

RE: **Water Right Applications #36-08783 (15 cfs Billingsley Creek), #36-08784 (12 cfs Billingsley Creek), #36-08785 (16 cfs Riley Creek) Buckeye Farms, and # 36-08786 (15 cfs Billingsley Creek)Western Legends**

Dear Allen,

We would like to protest the above referenced water right applications for permits #36-08783 - #36-08786 for a cumulative total of 42 cfs from Billingsley Creek and 16 cfs from Riley Creek. All four diversions are for year-around use. The reason for the protest is the appropriations will be detrimental to fish and wildlife, including their associated habitats, and therefore, is not in the best interest of the general public of the State of Idaho.

Both Billingsley Creek and Riley Creek support diverse populations of fish and riparian dependent wildlife. Survival of these species, especially fish populations, are dependent on adequate flows to maintain biological parameters . Removal of 42 cfs from Billingsley Creek and 16 cfs from Riley Creek will result in flows which may not support dissolved oxygen levels and flowing water in pools and interstitial spaces which are utilized by fish and other aquatic organisms for reproductive or security habitats. These flow reductions, which we estimate represents between 60 and 80% of the average stream flow during low flow conditions at their confluence with the Snake River, will also result in a substantial reduction in overall habitat available for fish from the diversion points to the Snake River.

Water quality in both streams is also an issue which will be impacted by further diversions. Both Billingsley Creek and Riley Creek are currently on Idaho's Clean Water Act section 303(d) water quality limited list. Pollutants listed for each include nutrients, sediment, and low dissolved oxygen. Billingsley Creek is rated as a "high" priority while Riley Creek is rated "low" for development of total maximum daily loads for the listed pollutants.

It should also be noted that the Idaho Water Resources Board has on file an application for a minimum stream flow in Billingsley Creek below the Highway 20 bridge, with a proposed priority date of June 24, 1991. The amounts applied for are 75 cfs April 1 to Sept. 30 and 140 cfs from October 1 to March 31. Beneficial uses which the flows are targeted to support are:

Receipt # SO 21750
MB
1/25/99

208-324-4359 • Fax: 208-324-1160 • Idaho Relay (TDD) Service: 1-800-377-3529 • http://www.state.id.us/fishgame

fish rearing and spawning habitat, fish passage, waterfowl habitat, and aesthetic beauty. Although this application has not been acted upon by the Water Resource Board, it should be noted that any further diversions may potentially be diminished if the minimum stream flow amount is approved. For this reason we suggest the Billingsley Creek applications be held pending the decision of the Water Resource Board on the minimum flow right application.

Thank you for your consideration of this matter. If you have further questions please contact Dave Parrish, Natural Resource Biologist at this office.

Sincerely,

Carl H. Nellis
Magic Valley Regional Supervisor

cc: IDFG-NRPB (Robertson)
State of Idaho A.G.'s Office (Ampe)
IDWR-Boise (Graham)
IDHW-DEQ-Twin Falls (McMasters)
Buckeye Farms (Yore)
Western Legends

RECEIVED
JAN 2 1 1999
Department of Water Resources
Southern Region

CORRECTED
Proof of Publication

The Post Register

State of Idaho
County of Bonneville

I, S. Bob Bright or Robert Park, first being duly sworn, depose and say: That I am the Production Supervisor or Asst. Prod. Supervisor of The Post Company, a corporation of Idaho Falls, Bonneville County, Idaho, publishers of The Post Register, a newspaper of general circulation, published daily at Idaho Falls, Idaho; said Post Register being a consolidation of the Idaho Falls Times, established in the year 1890, The Idaho Register, established in the year 1880 and the Idaho Falls Post, established in 1903, such consolidation being made on the First day of November, 1931, and each of said newspapers have been published continuously and uninterruptedly, prior to consolidation, for more than twelve consecutive months and said Post Register having been published continuously and uninterruptedly from the date of such consolidation, up to and including the last publication of notice hereinafter referred to.

That the notice, of which a copy is hereto attached and made a part of this affidavit, was published in said Post Register for two consecutive (days) weeks, first publication having been made on the 7th day of January, 1999, last publication having been made on the 14th day of January, 1999, and that the said notice was published in the regular and entire issue of said paper on the respective dates of publication, and that such notice was published in the newspaper and not in a supplement.

Robert Park

Subscribed and sworn to before me, this 20th day of January , 1999.

Notary Public

My commission expires January 10, 2003

IVY BERRY NOTARY PUBLIC STATE OF IDAHO

OK
MB
1/22/99

NOTICE OF APPLICATIONS FOR WATER PERMIT

The following applications have been filed to appropriate the public waters of the State of Idaho:

BUCKEYE FARMS, INC., 18335 US HWY 30; HAGERMAN ID 83332 has filed three (3) applications:

Application for Permit No. 36-08783

Source: Billingsley Creek tributary to Snake River via Curren Ditch & South Pipeline
Diversion Pt(s): SW1/4NE1/4, S31, T07S, R14E; Gooding County.
Use: 01/01-12/31

Wildlife	(15.0 cfs)
Recreation	(15.0 cfs)
Aesthetic	(15.0 cfs)
Fish Propagation	(15.0 cfs)

Total Diversion: 15.0 cfs
In: Wildlife, Recreation, & Aesthetic use within parts of Sections 27, 33, 34, and 35 with Fish Propagation use specifically within SW1/4NW1/4 & NE1/4SW1/4, S34, all T07S, R13E; Gooding County.
Date Filed: 02/17/98

Application for Permit No. 36-08784

Source: Billingsley Creek tributary to Snake River via Buckeye Ditch
Diversion Pt(s): SE1/4NE1/4, S11, T07S, R13E; Gooding County.
Use: 01/01-12/31

Wildlife	(12.0 cfs)
Recreation	(12.0 cfs)
Aesthetic	(12.0 cfs)
Fish Propagation	(12.0 cfs)

Total Diversion: 12.0 cfs
In: Wildlife, Recreation, & Aesthetic use within parts of Sections 28, 33, and 34 with Fish Propagation use specifically within SW1/4NW1/4, S34, all T07S, R13E; Gooding County.
Date Filed: 02/17/98

Application for Permit No. 36-08785

Source: Riley Creek tributary to Snake River via Hunt Ditch
Diversion Pt(s): Lot 6 (SW1/4NE1/4), S01, T08S, R13E; Gooding County.
Use: 01/01-12/31

Wildlife	(16.0 cfs)
Recreation	(16.0 cfs)
Aesthetic	(16.0 cfs)
Fish propagation	(16.0 cfs)

Total Diversion: 16.0 cfs
In: Wildlife, Recreation, & Aesthetic use within parts of Sections 33 & 34 with Fish Propagation use specifically within SW1/4NW1/4 and NE1/4SW1/4, S34, all T07S, R13E; Gooding County.
Date Filed: 10/29/98

WESTERN LEGENDS LC, PO BOX 737; HAGERMAN ID 83332 has filed one (1) application:

Application for Permit No. 36-08786

Source: Billingsley Creek tributary to Snake River via Curren Ditch
Diversion Pt(s): SW1/4NE1/4, S32, T07S, R14E; Gooding County.
Use: 01/01-12/31

Recreation	(15.0 cfs)
Wildlife	(15.0 cfs)
Aesthetic	(15.0 cfs)

Total Diversion: 15.0 cfs
In: Within parts of Sections 23 and 26, T07S, R13E; Gooding County.
Date Filed: 12/02/98

All four (4) applications intend to utilize existing facilities. Any protest against the proposed applications 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 January 25, 1999 to be considered by the Department in its decision to grant or deny any part of the proposed applications. (Each application requires a separate protest). The protestant must also send a copy of the protest to the applicant.

Karl J. Dreher, Director

Published in the Post Register on 01/07 & 01/14/99.

OK
mb
1/22/99

RECEIVED
JAN 19 1999
Department of Water Resources
Southern Region

AFFIDAVIT OF PUBLICATION

RECEIVED

JAN 19 1999

Department of Water Resources
Southern Region

State of Idaho
County of Gooding } ss.

Patty Vance 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 115; 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 7th day of January 1999 and that date of the last publication was on the 14th day of January 1999

Patty Vance

On this 14th day of January 1999, before me, a Notary Public, personally appeared Patty Vance 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: 3/6/04

#c777/345.27
GOODING COUNTY LEADER
Gooding, Idaho

COST OF PUBLICATION

Number of Picas per Line _____
Number of Lines in Notice _____
Number of Insertions 2X

_____ Lines tabular at _____ 7¢/Pica
1249.88 Lines straight at 74.99 6¢/Pica
1249.88 Subsequent lines at 62.49 5¢/Pica
Affidavit Fee 2.25
TOTAL COST 139.73

Buckeye Farms, Inc.
TITLE OF NOTICE

PLAINTIFF ATTORNEY

DEFENDANT

PLAINTIFF
IDWR

BILL TO

COPY OF NOTICE

NOTICE OF APPLICATIONS FOR WATER PERMIT

The following applications have been filed to appropriate the public waters of the State of Idaho:

BUCKEYE FARMS, INC., 18335 US HWY 30; HAGERMAN ID 83332 has filed three (3) applications:

Application for Permit No. 36-08783
Source: Billingsley Creek tributary to Snake River via Curren Ditch & South Pipeline
Diversion Pt(s): SW1/4NE1/4, S31, T07S, R14E; Gooding County.
Use: 01/01-12/31

Wildlife	(15.0 cfs)
Recreation	(15.0 cfs)
Aesthetic	(15.0 cfs)
Fish Propagation	(15.0 cfs)

Total Diversion: 15.0 cfs
In: Wildlife, Recreation, & Aesthetic use within parts of Sections 27, 33, 34, and 35 with Fish Propagation use specifically within SW1/4NW1/4 & NE1/4SW1/4, S34, all T07S, R13E; Gooding County.
Date Filed: 02/17/98

PUBL (Idaho
7-8 pt.
7-8 pt.
7-8 pt. insert

Application for Permit No. 36-08784 /Pica
Source: Billingsley Creek tributary to /Pica
Snake River via Buckeye Ditch
Diversion Pt(s): SE1/4NE1/4, S31, /Pica
T07S, R13E; Gooding County.
Use: 01/01-12/31

Wildlife	(12.0 cfs)
Recreation	(12.0 cfs)
Aesthetic	(12.0 cfs)
Fish Propagation	(12.0 cfs)

No. Total Diversion: 12.0 cfs
In: Wildlife, Recreation, & Aesthetic use within parts of Sections 28, 33, and 34 with Fish Propagation use specifically within SW1/4NW1/4, S34, all T07S, R13E; Gooding County.
Date Filed: 02/17/98

Application for Permit No. 36-08785
Source: Riley Creek tributary to Snake River via Hunt Ditch
Diversion Pt(s): Lot 6 (SW1/4NE1/4), S01, T08S, R13E; Gooding County.
Use: 01/01-12/31

Wildlife	(16.0 cfs)
Recreation	(16.0 cfs)
Aesthetic	(16.0 cfs)
Fish propagation	(16.0 cfs)

Total Diversion: 16.0 cfs
In: Wildlife, Recreation, & Aesthetic use within parts of Sections 33 & 34 with Fish Propagation use specifically within SW1/4NW1/4 and NE1/4SW1/4, S34, all T07S, R13E; Gooding County.
Date Filed: 10/29/98

WESTERN LEGENDS LC, PO BOX 737; HAGERMAN ID 83332 has filed one (1) application:

Application for Permit No. 36-08786
Source: Billingsley Creek tributary to Snake River via Curren Ditch
Diversion Pt(s): SW1/4NE1/4, S32, T07S, R14E; Gooding County.
Use: 01/01-12/31

Recreation	(15.0 cfs)
Wildlife	(15.0 cfs)
Aesthetic	(15.0 cfs)

Total Diversion: 15.0 cfs
In: Within parts of Sections 23 and 26, T07S, R13E; Gooding County.
Date Filed: 12/02/98

All four (4) applications intend to utilize existing facilities. Any protest against the proposed applications 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 January 25, 1999 to be considered by the Department in its decision to grant or deny any part of the proposed applications. (Each application requires a separate protest). The protestant must also send a copy of the protest to the applicant.

Karl J. Dreher, Director

PUB 1/7 - 1/14 _____ G24527

The Lewiston Morning Tribune
505 C St., P.O.Box 957
Lewiston, Idaho 83501
(208) 743-9411

Account No. 446620

Description 191881Notice ' 'plicat

Times 2 es 94

Tab. Lines

$ 129.25

RECEIVED
JAN 19 1999
Department of Water Resources
Southern Region

OK mB 1/19/99

LEGAL ADVERTISING INVOICE

D TO: DEPT OF WATER RESOURCES
1341 FILLMORE STREET, SUITE 20
TWIN FALLS ID 83301-3380

NOTICE: This is an invoice of Purchase made by you. Statement will be rendered the first of the month
Please Retain This Invoice as Your Statement Will Refer to Invoice by No. Only.

NOTICE OF APPLICATIONS FOR WATER PERMIT

The following applications have been filed to appropriate the public waters of the State of Idaho:

BUCKEYE FARMS, INC., 18335 US HWY 30; HAGERMAN ID 83332 has filed three (3) applications:

Application for Permit No. 36-08783
Source: Billingsley Creek tributary to Snake River via Curren Ditch & South Pipeline
Diversion Pt(s): SW1/4NE1/4, S31, T07S, R14E; Gooding County.
Use: 01/01-12/31

Wildlife	(15.0cfs)
Recreation	(15.0cfs)
Aesthetic	(15.0cfs)
Fish Propagation	(15.0cfs)

Total Diversion: 15.0 cfs
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Date Filed: 02/17/98

Application for Permit No. 36-08784
Source: Billingsley Creek tributary to Snake River via Buckeye Ditch
Diversion Pt(s): SE1/4NE1/4, S11, T07S, R13E; Gooding County.
Use: 01/01-12/31

Wildlife	(12.0cfs)
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Aesthetic	(12.0cfs)
Fish Propagation	(12.0cfs)

Total Diversion: 12.0 cfs
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Date Filed: 02/17/98

Application for Permit No. 36-08785
Source: Riley Creek tributary to Snake River via Hunt Ditch
Diversion Pt(s): Lot 6 (SW1/4NE1/4), S01, T08S, R13E; Gooding County.
Use: 01/01-12/31

Wildlife	(16.0cfs)
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Wildlife	(15.0 cfs)
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Karl J. Dreher, Director

Published in the Lewiston Morning Tribune on 01/07 & 01/14/99.

AFFIDAVIT OF PUBLICATION

STATE OF IDAHO, ss.
County of Nez Perce

Karen Lewis, being duly sworn, deposes and says: I am the Legal Clerk of the Tribune Publishing Company, a corporation organized and existing under and by virtue of the laws of the State of Idaho, publishers of the LEWISTON MORNING TRIBUNE, a newspaper of general circulation published at Lewiston, Nez Perce County, Idaho; That the said Lewiston Morning Tribune is an established newspaper and has been published regularly and issued regularly at least once a day for more than 21 consecutive years next immediately preceding the first publication of this notice, and has been so published uninterrupted for said period; that the 191881NoticeofA attached hereto and which is made a part of this affadavit was published in the said Lewiston Morning Tribune, 2 time(s). Publication being on 01/07, or once a WEEK for 2 consecutive WEEK, the first publication thereof being on the 01/07/99, and the last publication thereof being on the 01/14/99, and said 191881NoticeofA was so published in the regular and entire issue of said newspaper and was not in a supplement thereof and was so published in every issue and number of the said paper, during the period and times of publication as set forth above.

SUBSCRIBED AND SWORN BEFORE ME THIS THE

day of 1999

Notary Public in and for the State of Idaho, residing at Lewiston, therein
Commission Expires

RECEIVED

JAN 15 1999

Department of Water Resources
Southern Region

Affidavit of Publication

STATE OF IDAHO }
COUNTY OF TWIN FALLS } SS.

No 3134

I, Emily McKnight being first duly sworn upon oath, depos
and say that I am Principal Clerk of the TIMES-NEWS, published daily, a
Twin Falls, Idaho, and do solemnly swear that a copy of the notice of advertisement, as pe
clipping attached, was published in the regular and entire issue of said newspaper, and not in an
supplement thereof, for Two consecutive weeks
commencing with the issue dated Jan 7, 19 99
and ending with the issue dated Jan 14, 19 99

And I do further certify that said newspaper is a consolidation, effective February 16, 1942, of the Idah
Evening Times, published theretofore daily except Sunday, and the Twin Falls News, published theretofore daily excep
Monday, both of which newspapers prior to consolidation had been published under said names in said city and count
continuously and uninterruptedly during a period of more than twelve consecutive months, and said TIMES-NEWS, sinc
such consolidation, has been published as a daily newspaper except Saturday, until July 31, 1978, at which time sai
newspaper began daily publication under said name in said city and county continuously and uninterruptedly.

And I further certify that pursuant to Section 60-108 Idaho Code, Thursday of each week has been designate
as the day on which legal notice by law or by order of any court of competent jurisdiction within the state of Idaho, to b
published weekly, will be published; and that at the head of the editorial column of said combined newspapers, and in eac
issue thereof, Thursday is announced as the day on which said legal notices will be published.

STATE OF IDAHO
COUNTY OF TWIN FALLS

On this 14th day of Jan. in the year of 1999, before mc
a Notary Public, personally appeared Emily McKnight
known or identified to me to be the person whose name subscribed to the within instrument, and being by me first dul
sworn, declared that the statements therein are true, and acknowledged to me that he executed the same.

Treva R. Feltman
Notary Public for Idaho
Residing at Twin Falls, Idaho.
My commission expires: 5/19/2000

OK mb 1/19/99

NOTICE OF APPLICATIONS FOR WATER PERMIT

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Use: 01/01-12/31
Wildlife* (15.0 cfs)
Recreation*(15.0 cfs)
Aesthetic *(15.0 cfs)
Fish Propagation* (15.0 cfs)
Total Diversion: 15.0 cfs
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Date Filed: 02/17/98

Application for Permit No. 36-08784

Source: Billingsley Creek tributary to Snake River via Buckeye Ditch
Diversion Pt(s): SE1/4NE1/4, S11, T07S, R13E; Gooding County.
Use: 01/01-12/31
Wildlife* (12.0 cfs)
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Date Filed: 02/17/98

Application for Permit No. 36-08785

Source: Riley Creek tributary to Snake River via Hunt Ditch
Diversion Pt(s): Lot 6 (SW1/4NE1/4), S01, T08S, R13E; Gooding County.
Use: 01/01-12/31
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Recreation*(16.0 cfs)
Aesthetic *(16.0 cfs)
Fish propagation* (16.0 cfs)
Total Diversion: 16.0 cfs
In: Wildlife, Recreation, &

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Recreation	(15.0 cfs)
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Aesthetic(	(15.0 cfs)
Total Diversion:	(15.0 cfs)

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Date Filed: 12/02/98

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Karl J. Dreher, Director

Pub. Jan. 7,14, 1999.

3003

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

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

December 23, 1998

DAVID B SHAW
2309 N MOUNTAIN VIEW DR
SUITE 174
BOISE ID 83706

Re: Applications for Permit No. 36-08783, 36-08784, 36-08785 (Buckeye Farms)

Dear Mr. Shaw:

The Department of Water Resources acknowledges receipt of your three (3) water right applications for permit. The applications have been assigned the above referenced identification numbers. Please refer to these numbers in all further correspondence.

This office has scheduled advertising the applications in the Gooding County Leader and statewide in the Idaho Statesman, Post Register, Lewiston Morning Tribune, Times News for 01/07 & 01/14/99. A period of ten days following the second publication will be allowed for the submittal of protests.

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.

If an application is not protested, it will be forwarded to our State Office in about five weeks. 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. If a permit is issued, you will be sent a copy. A typical processing time for an unprotested application is about eight weeks.

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

cc:

BUCKEYE FARMS INC
18335 US HWY 30
HAGERMAN ID 83332

JOHN A ROSHOLT ESQ
ROSHOLT ROBERTSON & TUCKER
PO BOX 1906
TWIN FALLS ID 83303-1906

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

December 23, 1998

PHILIP E. BATT
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
Sr. Secretary

Enclosure

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Date Filed: 02/17/98

Application for Permit No. 36-08784

Source: Billingsley Creek tributary to Snake River via Buckeye Ditch

Diversion Pt(s): SE1/4NE1/4, S11, T07S, R13E; Gooding County.

Use: 01/01-12/31

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Date Filed: 10/29/98

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Application for Permit No. 36-08786

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Use: 01/01-12/31

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Wildlife	(15.0 cfs)
Aesthetic	(15.0 cfs)

Total Diversion: 15.0 cfs

In: Within parts of Sections 23 and 26, T07S, R13E; Gooding County.

Date Filed: 12/02/98

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Karl J. Dreher, Director

Published in the Gooding County Leader on 01/07 & 01/14/99.

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

December 23, 1998

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

ATTENTION LEGALS
TIMES NEWS
PO BOX 548
TWIN FALLS ID 83301

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.

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Date Filed: 02/17/98

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Source: Riley Creek tributary to Snake River via Hunt Ditch
Diversion Pt(s): Lot 6 (SW1/4NE1/4), S01, T08S, R13E; Gooding County.
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Date Filed: 10/29/98

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Use: 01/01-12/31
Recreation*(15.0 cfs)
Wildlife*(15.0 cfs)
Aesthetic*(15.0 cfs)
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In: Within parts of Sections 23 and 26, T07S, R13E; Gooding County.
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Published in the Times News on 01/07 & 01/14/99.

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

December 23, 1998

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

ATTENTION-KATHY-LEGALS
POST REGISTER
PO BOX 1800
IDAHO FALLS ID 83402

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
Sr. Secretary

Enclosure

NOTICE OF APPLICATIONS FOR WATER PERMIT

The following applications have been filed to appropriate the public waters of the State of Idaho:

BUCKEYE FARMS, INC., 18335 US HWY 30; HAGERMAN ID 83332 has filed three (3) applications:

Application for Permit No. 36-08783

Source: Billingsley Creek tributary to Snake River via Curren Ditch & South Pipeline

Diversion Pt(s): SW1/4NE1/4, S31, T07S, R14E; Gooding County.

Use: 01/01-12/31

Wildlife	(15.0 cfs)
Recreation	(15.0 cfs)
Aesthetic	(15.0 cfs)
Fish Propagation	(15.0 cfs)

Total Diversion: 15.0 cfs

In: Wildlife, Recreation, & Aesthetic use within parts of Sections 27, 33, 34, and 35 with Fish Propagation use specifically within SW1/4NW1/4 & NE1/4SW1/4, S34, all T07S, R13E; Gooding County.

Date Filed: 02/17/98

Application for Permit No. 36-08784

Source: Billingsley Creek tributary to Snake River via Buckeye Ditch

Diversion Pt(s): SE1/4NE1/4, S11, T07S, R13E; Gooding County.

Use: 01/01-12/31

Wildlife	(12.0 cfs)
Recreation	(12.0 cfs)
Aesthetic	(12.0 cfs)
Fish Propagation	(12.0 cfs)

Total Diversion: 12.0 cfs

In: Wildlife, Recreation, & Aesthetic use within parts of Sections 28, 33, and 34 with Fish Propagation use specifically within SW1/4NW1/4, S34, all T07S, R13E; Gooding County.

Date Filed: 02/17/98

Application for Permit No. 36-08785

Source: Riley Creek tributary to Snake River via Hunt Ditch

Diversion Pt(s): Lot 6 (SW1/4NE1/4), S01, T08S, R13E; Gooding County.

Use: 01/01-12/31

Wildlife	(16.0 cfs)
Recreation	(16.0 cfs)
Aesthetic	(16.0 cfs)
Fish propagation	(16.0 cfs)

Total Diversion: 16.0 cfs

In: Wildlife, Recreation, & Aesthetic use within parts of Sections 33 & 34 with Fish Propagation use specifically within SW1/4NW1/4 and NE1/4SW1/4, S34, all T07S, R13E; Gooding County.

Date Filed: 10/29/98

WESTERN LEGENDS LC, PO BOX 737; HAGERMAN ID 83332 has filed one (1) application:

Application for Permit No. 36-08786

Source: Billingsley Creek tributary to Snake River via Curren Ditch

Diversion Pt(s): SW1/4NE1/4, S32, T07S, R14E; Gooding County.

Use: 01/01-12/31

Recreation	(15.0 cfs)
Wildlife	(15.0 cfs)
Aesthetic	(15.0 cfs)

Total Diversion: 15.0 cfs

In: Within parts of Sections 23 and 26, T07S, R13E; Gooding County.

Date Filed: 12/02/98

All four (4) applications intend to utilize existing facilities. Any protest against the proposed applications 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 January 25, 1999 to be considered by the Department in its decision to grant or deny any part of the proposed applications. **(Each application requires a separate protest).** The protestant must also send a copy of the protest to the applicant.

Karl J. Dreher, Director

Published in the Post Register on 01/07 & 01/14/99.

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

December 23, 1998

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

ATTENTION-LEGALS
LEWISTON MORNING TRIBUNE
606 C STREET
LEWISTON ID 83501

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.

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Mary Baldwin
Sr. Secretary

Enclosure

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Application for Permit No. 36-08783

Source: Billingsley Creek tributary to Snake River via Curren Ditch & South Pipeline

Diversion Pt(s): SW1/4NE1/4, S31, T07S, R14E; Gooding County.

Use: 01/01-12/31

Wildlife	(15.0cfs)
Recreation	(15.0cfs)
Aesthetic	(15.0cfs)
Fish Propagation	(15.0cfs)

Total Diversion: 15.0 cfs

In: Wildlife, Recreation, & Aesthetic use within parts of Sections 27, 33, 34, and 35 with Fish Propagation use specifically within SW1/4NW1/4 & NE1/4SW1/4, S34, all T07S, R13E; Gooding County.

Date Filed: 02/17/98

Application for Permit No. 36-08784

Source: Billingsley Creek tributary to Snake River via Buckeye Ditch

Diversion Pt(s): SE1/4NE1/4, S11, T07S, R13E; Gooding County.

Use: 01/01-12/31

Wildlife	(12.0cfs)
Recreation	(12.0cfs)
Aesthetic	(12.0cfs)
Fish Propagation	(12.0cfs)

Total Diversion: 12.0 cfs

In: Wildlife, Recreation, & Aesthetic use within parts of Sections 28, 33, and 34 with Fish Propagation use specifically within SW1/4NW1/4, S34, all T07S, R13E; Gooding County.

Date Filed: 02/17/98

Application for Permit No. 36-08785

Source: Riley Creek tributary to Snake River via Hunt Ditch

Diversion Pt(s): Lot 6 (SW1/4NE1/4), S01, T08S, R13E; Gooding County.

Use: 01/01-12/31

Wildlife	(16.0cfs)
Recreation	(16.0cfs)
Aesthetic	(16.0cfs)
Fish propagation	(16.0cfs)

Total Diversion: 16.0 cfs

In: Wildlife, Recreation, & Aesthetic use within parts of Sections 33 & 34 with Fish Propagation use specifically within SW1/4NW1/4 and NE1/4SW1/4, S34, all T07S, R13E; Gooding County.

Date Filed: 10/29/98

WESTERN LEGENDS LC, PO BOX 737; HAGERMAN ID 83332 has filed one (1) application:

Application for Permit No. 36-08786

Source: Billingsley Creek tributary to Snake River via Curren Ditch

Diversion Pt(s): SW1/4NE1/4, S32, T07S, R14E; Gooding County.

Use: 01/01-12/31

Recreation	(15.0 cfs)
Wildlife	(15.0 cfs)
Aesthetic	(15.0 cfs)

Total Diversion: 15.0 cfs

In: Within parts of Sections 23 and 26, T07S, R13E; Gooding County.

Date Filed: 12/02/98

All four (4) applications intend to utilize existing facilities. Any protest against the proposed applications 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 January 25, 1999 to be considered by the Department in its decision to grant or deny any part of the proposed applications. (**Each application requires a separate protest**). The protestant must also send a copy of the protest to the applicant.

Karl J. Dreher, Director

Published in the Lewiston Morning Tribune on 01/07 & 01/14/99.

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

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

December 23, 1998

ATTENTION-LEGALS
IDAHO STATESMAN
PO BOX 40
BOISE ID 83707

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.

Very truly yours,

Mary Baldwin
Sr. Secretary

Enclosure

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Source: Billingsley Creek tributary to Snake River via Curren Ditch & South Pipeline

Diversion Pt(s): SW1/4NE1/4, S31, T07S, R14E; Gooding County.

Use: 01/01-12/31

Wildlife	(15.0 cfs)
Recreation	(15.0 cfs)
Aesthetic	(15.0 cfs)
Fish Propagation	(15.0 cfs)

Total Diversion: 15.0 cfs

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Date Filed: 02/17/98

Application for Permit No. 36-08784

Source: Billingsley Creek tributary to Snake River via Buckeye Ditch

Diversion Pt(s): SE1/4NE1/4, S11, T07S, R13E; Gooding County.

Use: 01/01-12/31

Wildlife	(12.0 cfs)
Recreation	(12.0 cfs)
Aesthetic	(12.0 cfs)
Fish Propagation	(12.0 cfs)

Total Diversion: 12.0 cfs

In: Wildlife, Recreation, & Aesthetic use within parts of Sections 28, 33, and 34 with Fish Propagation use specifically within SW1/4NW1/4, S34, all T07S, R13E; Gooding County.

Date Filed: 02/17/98

Application for Permit No. 36-08785

Source: Riley Creek tributary to Snake River via Hunt Ditch

Diversion Pt(s): Lot 6 (SW1/4NE1/4), S01, T08S, R13E; Gooding County.

Use: 01/01-12/31

Wildlife	(16.0 cfs)
Recreation	(16.0 cfs)
Aesthetic	(16.0 cfs)
Fish propagation	(16.0 cfs)

Total Diversion: 16.0 cfs

In: Wildlife, Recreation, & Aesthetic use within parts of Sections 33 & 34 with Fish Propagation use specifically within SW1/4NW1/4 and NE1/4SW1/4, S34, all T07S, R13E; Gooding County.

Date Filed: 10/29/98

WESTERN LEGENDS LC, PO BOX 737; HAGERMAN ID 83332 has filed one (1) application:

Application for Permit No. 36-08786

Source: Billingsley Creek tributary to Snake River via Curren Ditch

Diversion Pt(s): SW1/4NE1/4, S32, T07S, R14E; Gooding County.

Use: 01/01-12/31
Recreation (15.0 cfs)
Wildlife (15.0 cfs)
Aesthetic (15.0 cfs)

Total Diversion: 15.0 cfs

In: Within parts of Sections 23 and 26, T07S, R13E; Gooding County.

Date Filed: 12/02/98

All four (4) applications intend to utilize existing facilities. Any protest against the proposed applications 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 January 25, 1999 to be considered by the Department in its decision to grant or deny any part of the proposed applications. **(Each application requires a separate protest).** The protestant must also send a copy of the protest to the applicant.

Karl J. Dreher, Director

Published in the Gooding County Leader, Times News, Idaho Statesman, Post Register, and Lewiston Morning Tribune on 01/07 & 01/14/99.

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

December 18, 1998

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

FRANK ERWIN WATERMASTER
WATER DISTRICT 36-A
2628 S 975 E
HAGERMAN ID 83332

Re: Applications for Permit No. 36-08783 thru 36-08785 filed in the name of Buckeye Farms, Inc. AND Application for Permit No. 36-08786 filed in the name of Western Legends, LC

Dear Mr. Erwin:

Enclosed are copies of the above referenced Applications for Permit within your District.

We also have enclosed Watermaster's Recommendation Forms for your comment and/or recommendation.

Regional review of an unprotested application can be completed as soon as the final protest period is past; therefore, your prompt response to this request is appreciated.

If you have any questions about an application, please contact this office or the applicant.

Very truly yours,

James E. Stanton
Sr. Water Resource Agent

JS:MB

Enclosures

State of Idano
DEPARTMENT OF WATER RESOURCES
1341 Fillmore Street, Suite 200, Twin Falls, ID 83301-3380
Phone: (208) 736-3033 FAX: (208) 736-3037

December 18, 1998

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

ATTN DAVE PARRISH
ID DEPT OF FISH & GAME
PO BOX 428
JEROME ID 83338

Re: Applications for Permit No. 36-08783 thru 36-08785 filed in the name of Buckeye Farms, Inc. AND Application for Permit No. 36-08786 filed in the name of Western Legends, LC

Dear Mr. Parrish:

The Department is seeking a written Comment &/or Recommendation from your agency regarding the above referenced applicationsfor surface water; a copy of the applications are enclosed for your information and reference.

Regional review of an unprotested application can be completed as soon as the final protest period is past; therefore, your prompt response to this request is appreciated.

If you have any questions about an application, please contact this office or the applicant.

Very truly yours,

James E. Stanton
Sr. Water Resource Agent

JS:MB

Enclosures

12/18/98

ACTION REQUIRED

FROM: MB

TO: Terry Blair

SCA Comment Please

Western Legends LC

Post Office Box 737
Hagerman, Idaho 83332

Telephone (208) 837-6641

December 9, 1998

Via Fax: 736-3037
Allen Merritt
Idaho Department of Water Resources
1341 Fillmore Street, Suite 200
Twin Falls, ID 83301-3380

RECEIVED
DEC 09 1998
Department of Water Resources
Southern Region

cc: Dave Tuthill, Boise IDWR
Via Fax 327-7866

Re: Permit/License processing
Buckeye Farms - Nos. 36-07739, 36-08335, 36-07742, 36-08730, 36-07741, 36-08729, 36-07740, 36-08728
Buckeye Farms - New Applications filed 10/98 (3 applications)

Dear Allen:

As we discussed with you on Monday, we hereby formally request that we be notified and receive copies of all further actions taken on the above referenced Applicatons for permit and Permits being processed to licenses. As we stated, we will be submitting comments with respect to all of these applications and/or permits being processed to licenses.

We are requesting this information in accordance with the Idaho Code Administrative Procedures Act.

Please send all notices to:

Western Legends LC
P. O. Box 737
Hagerman, ID 83330

Thank you for your cooperation in this matter.

Very truly yours,

WESTERN LEGENDS LC

Michael McCarthy
Co-Manager

The Idaho Statesman

P.O. BOX 40, BOISE, IDAHO 83707-0040

LEGAL ADVERTISING INVOICE

OK MB 1/14/

Amount Due
$128.40

Account Number/Trans. #	Identification
100632	NOTICE OF APPLICATION FOR WATER PERMIT

Ordered By	P.O. Number	Rate	Run Dates
MARY BALDWIN		NT	JANUARY 7, 14, 1999

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES SOUTH
1341 FILLMORE STREET, SUITE 200
TWIN FALLS, IDAHO 83301-3380

Estimated Inches	Real Inches
# Affidavits	**Legal Number**
1	3003

RECEIVED
JAN 15 1999
Department of Water Resources
Southern Region

JANICE HILDRETH, being duly sworn, deposes and says: That she is the Principal Clerk of The Idaho Statesman, a daily newspaper printed and published at Boise, Ada County, State of Idaho, and having a general circulation therein and which said newspaper has been continuously and uninterruptedly published in said County during a period of twelve consecutive months prior to the first publication of the notice, a copy of which is attached hereto; that said notice was published in The Idaho Statesman in conformity with Section 60-108, Idaho Code as amended, for TWO

- ☒ consecutive weekly ☐ single
- ☐ consecutive daily ☐ odd skip

insertion(s) beginning with the issue of JANUARY 7, 1999
and ending with the issue of JANUARY 14, 1999

Janice Hildreth

STATE OF IDAHO)
) ss.
COUNTY OF ADA)

On this 14TH day of JANUARY in the year of 1999, before me, a Notary Public, personally appeared JANICE HILDRETH 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 she executed the same.

JAN ENGLISH NOTARY PUBLIC STATE OF IDAHO

Notary Public for Idaho
Residing at: Boise, Idaho
My commission expires: 04/28/02

ERO
RESOURCES CORPORATION
Consultants in Natural Resources and the Environment

October 27, 1998

Corey Skinner, EIT
Idaho Department of Water Resources
1341 Fillmore Street, Suite 200
Twin Falls, ID 83301-3380

RECEIVED
OCT 29 1998
Department of Water Resources
Southern Region

Re: Buckeye Farms Applications

Dear Mr. Skinner:

I am writing in response to your February 24, 1998 letter to Buckeye Farms and your March 10, 1998 letter to me regarding two water right applications filed by Buckeye Farms. I apologize for the delay in responding, however, I believe the enclosed information will be sufficient to allow the applications to be processed.

Enclosed are two replacement applications for the previously submitted applications seeking to appropriate water from Billingsley Creek. Your March 10, 1998 letter suggested replacement applications could be filed and I assume the original filing date will be retained as the priority date for these two filings.

A third application is enclosed seeking to appropriate water from Riley Creek. The enclosed check in the amount of $400 is the filing fee for the Riley Creek application. The fee for the Billingsley Creek applications was submitted with the original applications earlier this year.

Also enclosed is a Limited Power of Attorney for John A. Rosholt to sign water right documents for Buckeye Farms, Inc. The original applications were signed by John K. Simpson of the Rosholt, Robertson & Tucker law firm. Closer examination of the Limited Power of Attorney showed it to be for John A. Rosholt individually and not for the law firm, thus these applications have been signed by Mr. Rosholt. These applications are being filed as part of a settlement of disputed water right claims in the SRBA which brings them within the scope of the Limited Power of Attorney.

The intent of the applications is to ensure adequate water for the existing Buckeye Farms facilities. No new or expanded facilities are planned and the applications, if approved, will not result in the additional consumptive use of water. New ownership of adjacent properties and the SRBA itself are expected to result in changes in water use and management in the Hagerman Valley. These applications

2309 N. Mountain View Dr., Suite 174, Boise, ID 83706 (208) 373-7983 FAX (208) 373-7985

36-07785

are intended to minimize the impacts of those changes on the operation of Buckeye Farms.

Thank you for the many suggestions contained in your earlier letters. I believe they are appropriately incorporated in the enclosed applications. The additional information that will be required prior to final approval of the fish propagation portion of the applications is not included with the enclosed applications but will be furnished at the appropriate time.

If you have questions or need additional information prior to advertising these applications please contact me. Thank you again for your help.

Yours truly,

David B. Shaw

Enc.

cc: John K. Simpson (w/o Enc.)
Brian Barsotti (w/o Enc.)

IDAHO DEPARTMENT OF WATER RESOURCES

Water Right Report 36-8729

WATER RIGHT NUMBER: 36-8729 DRAFT

Owner Type	Name and Address
Original Owner	BUCKEYE LAND CO RT 1 HAGERMAN, ID 83332 (208)837-6174
Current Owner	BUCKEYE FARMS INC 18335 U S HWY 30 HAGERMAN, ID 83332 (208)837-6595

Priority Date: 09/24/1987

Basis: License

Status: Active DRAFT

Source	Tributary
RILEY CREEK	SNAKE RIVER

Beneficial Use	From	To	Diversion Rate	Annual Volume
RECREATION STORAGE	01/01	12/31		748.00 AF
AESTHETIC STORAGE	01/01	12/31		748.00 AF
WILDLIFE STORAGE	01/01	12/31		748.00 AF
DIVERSION TO STORAGE	01/01	12/31	22.450 CFS	
		Total Diversion:	22.450 CFS	748.00 AF

Location of Point(s) of Diversion

RILEY CREEK L6 (SE1/4SW1/4NE1/4) Sec. 1, Twp 08S, Rge 13E, B.M.

GOODING County

Place of Use

RECREATION STORAGE

Twp	Rge	Sec	NE				NW				SW				SE								Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE					
07S	13E	27												X			X	X					
07S	13E	33			X	X									X	X		X					
07S	13E	34	X	X		X	X		X		X	X	X		X	X							
07S	13E	35						X															

AESTHETIC STORAGE

IDAHO DEPARTMENT OF WATER RESOURCES

Water Right Report 36-8729

Twp	Rge	Sec	NE				NW				SW				SE					Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE		
07S	13E	27												X			X	X		
07S	13E	33			X	X									X	X		X		
07S	13E	34	X	X		X	X		X		X	X	X		X	X				
07S	13E	35						X												

WILDLIFE STORAGE

Twp	Rge	Sec	NE				NW				SW				SE					Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE		
07S	13E	27												X			X	X		
07S	13E	33			X	X									X	X		X		
07S	13E	34	X	X		X	X		X		X	X	X		X	X				
07S	13E	35						X												

Conditions of Approval:

1. R04 Use of water under this water right will be regulated by the watermaster of State Water District No. 36A.
2. R43 The right holder shall maintain a measuring device and lockable controlling works of a type approved by the Department in a manner that will provide the watermaster suitable control of the diversion.
3. X35 Rights 36-08335, 36-08728, 36-08730 and 36-08729 when combined shall not exceed a total annual maximum storage volume of 871 af.

Remarks:

1. Water is delivered through Hunt Ditch.
2. General Rights 36-00001, 36-00002, 36-07741 and 36-08729 when combined shall not exceed a total diversion rate of 22.45 cfs.
3. The uses of water under this right are for private fishing, hunting and aesthetic ponds.

IDAHO DEPARTMENT OF WATER RESOURCES

Water Right Report 36-8729

Comments:

1. kwalker 2/7/2002 Place of Use
Comment: When I updated GIS with the shapes Dan created for the place of use, I found that a little bit of a pond was located within the NWNW, S35, T7S, R13E. Dan had not included this tract in his recommended place of use but I am going to add it since GIS found it to be a part of the place of use.

Dates and Other Information:

Licensed Date:
Decreed Date:
Water Supply Bank Enrollment Accepted:
Water Supply Bank Enrollment Removed:
Enlargement Use Priority Date:
Enlargement Statute Priority Date:
State or Federal:
Owner Name Connector:
Water District Number: 36A
Generic Max Rate Per Acre:
Generic Max Volume Per Acre:
Decree Defendant:
Decree Plaintiff:
Civil Case Number:
Judicial District:
Swan Falls Trust or Nontrust:
Swan Falls Dismissed:
DLE Act Number:
Carey Act Number:
Mitigation Plan: False

Combined Use Limits:

Rate	Volume	Acres
22.45		

Combined Water Rights: 36-7741 , 36-8729

Rate	Volume	Acres
24		

Combined Water Rights: 36-7741 , 36-8729

Rate	Volume	Acres
22.45		

Combined Water Rights: 36-1 , 36-2 , 36-7741 , 36-8729

Rate	Volume	Acres
		24

Combined Water Rights: 36-7741 , 36-8729

Rate	Volume	Acres
	871	

Combined Water Rights: 36-8335 , 36-8728 , 36-8729 , 36-8730

Rate	Volume	Acres
	871	

Combined Water Rights: 36-8335 , 36-8728 , 36-8729 , 36-8730

IDAHO DEPARTMENT OF WATER RESOURCES

Water Right Report 36-8729