

State of Idaho
Department of Water Resources
Permit to Appropriate Water

NO. 63-32052

Priority: November 12, 2004

Maximum Diversion Rate: 0.20 CFS

This is to certify, that TUSCANY DEVELOPMENT INC
PO BOX 344
MERIDIAN ID 83680

has applied for a permit to appropriate water from:

Source: GROUND WATER
GROUND WATER

Tributary: BOISE RIVER

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

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>RATE OF DIVERSION</u>	<u>ANNUAL VOLUME</u>
DIVERSION TO STORAGE	01/01 to 12/31	0.20 CFS	
AESTHETIC STORAGE	01/01 to 12/31		16.8 AF

LOCATION OF POINTS OF DIVERSION:

GROUND WATER	NE $\frac{1}{4}$ NW $\frac{1}{4}$	Sec. 29, Twp 03N, Rge 01E, B.M., ADA County
GROUND WATER	SE $\frac{1}{4}$ NW $\frac{1}{4}$	Sec. 29, Twp 03N, Rge 01E, B.M., ADA County
GROUND WATER	SE $\frac{1}{4}$ NW $\frac{1}{4}$	Sec. 29, Twp 03N, Rge 01E, B.M., ADA County
GROUND WATER	SE $\frac{1}{4}$ NW $\frac{1}{4}$	Sec. 29, Twp 03N, Rge 01E, B.M., ADA County
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GROUND WATER	SE $\frac{1}{4}$ NW $\frac{1}{4}$	Sec. 29, Twp 03N, Rge 01E, B.M., ADA County
GROUND WATER	SE $\frac{1}{4}$ NW $\frac{1}{4}$	Sec. 29, Twp 03N, Rge 01E, B.M., ADA County

PLACE OF USE: AESTHETIC 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	
03N 01E 29					X	X	X	X									

CONDITIONS OF APPROVAL

1. Proof of application of water to beneficial use shall be submitted on or before **May 01, 2010**.
2. Subject to all prior water rights.
3. Project construction shall commence within one year from the date of permit issuance and shall proceed diligently to completion unless it can be shown to the satisfaction of the Director of the Department of Water Resources that delays were due to circumstances over which the permit holder had no control.
4. Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code and applicable Well Construction Rules of the Department.
5. Water bearing zone to be appropriated is from 0 to 250 feet.
6. The well to be developed under this right shall be cased to a depth of at least 150 feet.

State of Idaho
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7. To mitigate for the depletion of water resulting from the use of water under this right and to prevent injury to senior water right holders, the right holder shall cease diverting and using water as authorized by the following water rights for the purposes and amounts specified below.

Right No.	Use Changed to Mitigation	Mitigation Rate	Mitigation Volume	Mitigation Acres
63-7194	Irrigation	0.05 cfs	12.6 af	2.8

The land that will no longer be irrigated under this right is located within the SE $\frac{1}{4}$ NE $\frac{1}{4}$, S21, Twp. 01N, Rge. 01W.

Prior to the diversion and use of water under this right, the right holder shall demonstrate ownership of the mitigation right to the Department pursuant to Idaho Code Section 42-248. When the ownership change is complete, the official record for the mitigation water right will be changed to show that diversion and use of water is not authorized because the right, or portion thereof, is being dedicated to mitigation purposes. If the specified mitigation right, or portion thereof, is sold, transferred, leased, used on any place of use, or is not deliverable due to a shortage of water or a priority call, then the amount of water authorized for diversion under this right shall be reduced by the same proportion as the reduction to the mitigation right.

8. Water for the initial filling of the ponds under this right shall be provided through the rental of 16.8 acre feet of water from the State Water Supply Bank or from some other source of water authorized by the Department.
9. 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. 63.
10. After specific notification by the Department, the right holder shall install a suitable measuring device or shall enter into an agreement with the Department to determine the amount of water diverted from power records and shall annually report the information to the Department.
11. Place of use under this right is also known as Tuscany Subdivision.
12. The Director retains jurisdiction to require the right holder to provide purchased or leased natural flow or stored water to offset depletion of Lower Snake River flows if needed for salmon migration purposes. The amount of water required to be released into the Snake River or a tributary, if needed for this purpose, will be determined by the Director based upon the reduction in flow caused by the use of water pursuant to this permit.

This permit is issued pursuant to the provisions of Section 42-204, Idaho Code. Witness the signature of the Director, affixed at Boise, this 9th day of June, 2005.


KARL J DREHER, Director

RECEIVED

APR 26 2005

Ident. No. 63-32052 12/99

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NOV 12 2004

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR PERMIT

To appropriate the public waters of the State of Idaho

1. Name of Applicant Tuscany Development Corporation Phone (208) 888-9946
Mailing address P.O. Box 344, Meridian, ID 83680
2. Source of water supply Ground Water which is a tributary of NA
3. Location of point of diversion is Township 3N Range 1E Sec. 29, in the NE 1/4, NW 1/4, Govt. Lot Ada County;
additional points of diversion if any: 5 ponds in SENW and one well in the SENW Section 29
4. Water will be used for the following purposes:
Amount 0.20 cfs for diversion to storage purposes from 1/1 to 12/31 (both dates inclusive)
(cfs or acre-feet per annum)
Amount 16.8 af for aesthetic storage purposes from 1/1 to 12/31 (both dates inclusive)
(cfs or acre-feet per annum)
Amount for purposes from to (both dates inclusive)
(cfs or acre-feet per annum)
Amount for purposes from to (both dates inclusive)
(cfs or acre-feet per annum)
5. Total quantity to be appropriated is (a) 0.20 and/or (b) 16.8 af
cubic feet per second acre feet per annum
6. Proposed diverting works:
a. Describe type and size of devices used to divert water from the source 6 excavated ponds (5 in the SENW and 1 in the NENW Section 29); well water will be added to ponds to offset evaporation and seepage loss and keep the ponds fresh; ponds will be clay lined to minimize seepage loss; one well with electric pump is proposed
b. Height of storage dam 0 feet; active reservoir capacity 0 acre-feet; total reservoir capacity 16.8 acre-feet
c. Proposed well diameter is 8 inches; proposed depth of well is 200 feet
d. Is ground water with a temperature of greater than 85°F being sought? No
e. If well is already drilled, when? ; Drilling firm ;
Well was drilled for (well owner) ; Drilling Permit No.
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 in 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. Aesthetic storage is six ponds with total surface area of 2.8 acres and total volume of 16.8 acre feet (6-foot average depth).

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	NE				NW				SW				SE				TOTALS
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
3N	1E	29					J	J	J	J									

J = aesthetic

Total number of acres to be irrigated _____

10. Describe any other water rights used for the same purposes as described above. none

11. a. Who owns the property at the point of diversion? Applicant

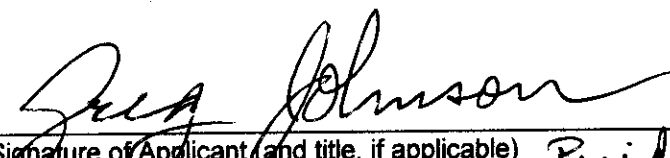
b. Who owns the land to be irrigated or place of use? Applicant

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

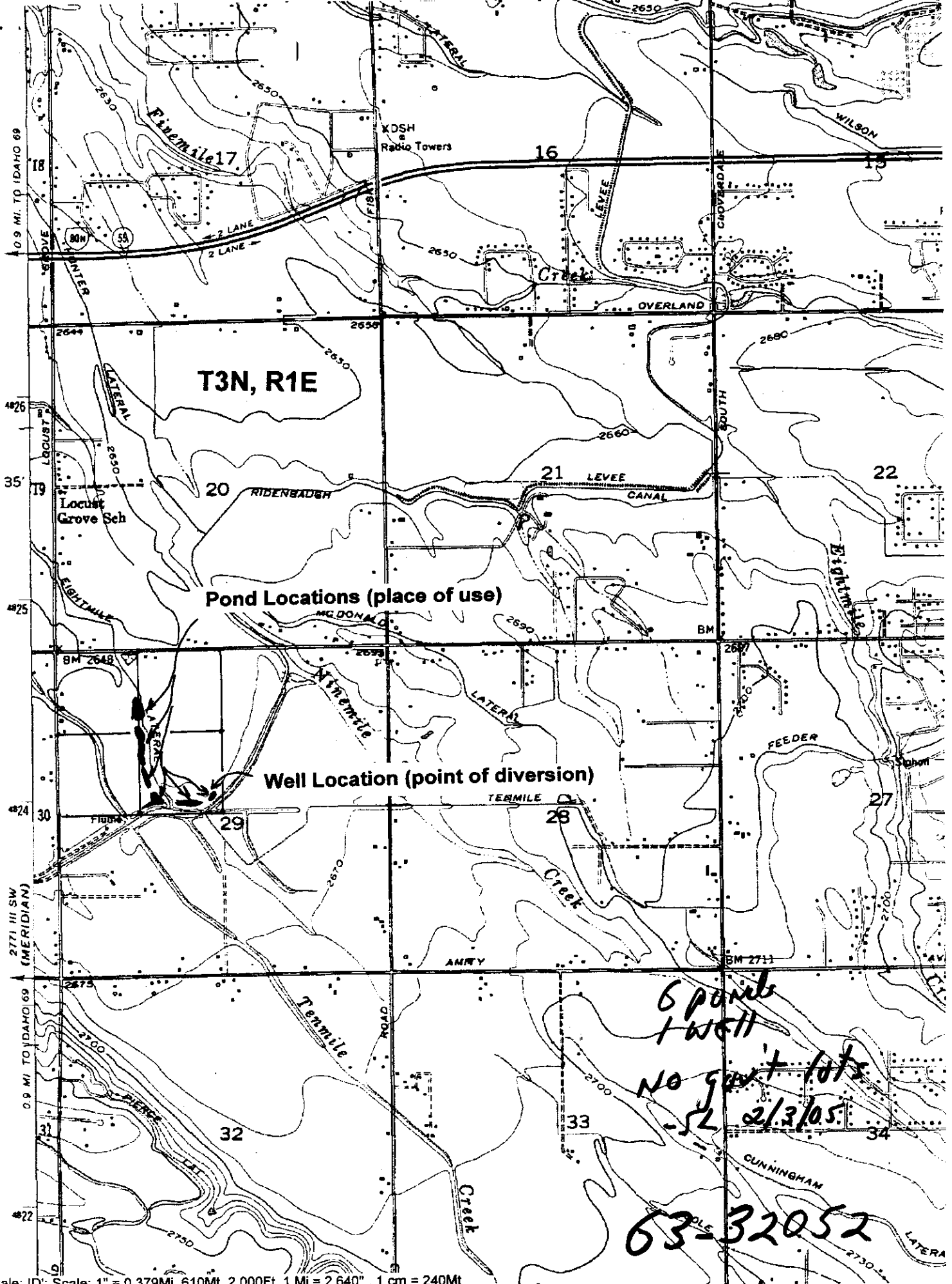
12. Remarks: This application proposes six aesthetic ponds totaling 2.8 acres surface area and 16.8 acre feet volume within Tuscany subdivision. The ponds will be filled with water from a well. Evaporation loss from the ponds will be mitigated by retirement of a 2.8-acre portion of water right 63-7194. Initial fill of ponds will be mitigated by one-time rental of 16.8 acre feet from the state water bank. Water-bearing zone to be appropriated is 0 to 250 feet.

13. **MAP OF PROPOSED PROJECT REQUIRED** - Attach an 8½"x11" map clearly identifying the proposed point of diversion, place of use, section #, township & range. (A photocopy of a USGS 7.5 minute topographic quadrangle map is preferred.)

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.


Signature of Applicant (and title, if applicable) President

Received by DB Date 11-12-04 Time 2:00 pm Preliminary check by SL
Fee \$ 100 - Receipted by DB # W032388 Date 11-12-04
Publication prepared by AK Date 2-3-05 Published in THE IDAHO STATESMAN
Publication approved AK Date 3-18-05





MEMO



63-32052

<u>POND NUMBER</u>	<u>AREA (SQ</u>
POND NO. 1	7,510
POND NO. 2	41,306
POND NO. 3	17,407
POND NO. 4	29,515
POND NO. 5	21,332
POND NO. 6	3085
<u>TOTAL</u>	<u>120,155</u>

OK per top: 5 good centers 5mm

new
new
new (big pond #6)

82 2/3/05

TUSCANY
SUBDIVISION

POND EXHIBIT

BRIGGS ENGINEERING, INC.



ENGINEERS PLANNERS SURVEYORS
1800 W. OVERLAND ROAD • BOISE, IDAHO 83705 • (208)344-9700

These drawings, or any portion thereof, shall not be used on any Project or extensions of this Project except by written agreement from Briggs Engineering, Inc.

REVISION : BY:

SHEET : 1 OF 1

EXHIBIT

21109\PONDEXHIBIT.DWG

DWG DATE:
06/21/04 BPT

DWG NO.
21109

SCALE:
1" = 300'

REQUEST TO PROCESS

COMPLETE REQUEST IF YOU WANT YOUR APPLICATION TO BE PROCESSED USING ONE OF THE
THREE ALTERNATIVES BELOW

Name of Applicant Tuscany Development Corporation
Mailing Address P.O. Box 344
Meridian, ID 83680
Application No. 63. 32052
(if known)

IN LOCAL PUBLIC INTEREST

Yes, I want my application processed and before it is advertised, I will amend my application to demonstrate that the proposed appropriation is in the local public interest including the need to preserve flows in the Snake River during the migration periods of anadromous fish.

X PROPOSE MITIGATION NOW SEE ATTACHMENT A

Yes, I want my application processed and before it is advertised, I will amend my application to include proposed mitigation to offset anticipated depletions in the Snake River during periods of anadromous fish migration.

WILL AGREE TO MITIGATION IN THE FUTURE IF NECESSARY

Yes, I want my application processed at this time, and I will accept a condition of approval that will require mitigation should the Director of the Idaho Department of Water Resources determine that mitigation is necessary to offset depletions from this appropriation to flows in the Snake River during periods of anadromous fish migration. I understand that mitigation is not required now but may be needed in the future. I also understand that the Director will not require mitigation until I have an opportunity to review the process by which the need for mitigation is established and the amount of water required is quantified.

Signature

Greg Johnson
11/9/04

Date

Please return this form to:

Idaho Dept. of Water Resources
Western Regional Office
2735 Airport Way
Boise, ID 83705-5082

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NOV 12 2004

WATER RESOURCES
WESTERN REGION

CONTRACT FOR SALE OF A WATER RIGHT

THIS CONTRACT FOR SALE OF A WATER RIGHT ("Agreement") is made by and between MELLIN PROPERTIES LIMITED PARTNERSHIP ("Seller"), an Idaho limited partnership, and TUSCANY DEVELOPMENT, INC. ("Buyer"), an Idaho corporation. Buyer and Seller may be referred to hereinafter as a "Party" or collectively as "Parties."

RECITALS

A. Seller owns a ground water right ("Water Right"), represented by license number 63-7194 in the records of the Idaho Department of Water Resources ("IDWR"), appropriated and used for irrigation purposes with a February 7, 1969 priority date. A copy of the Water Right license is attached hereto as Exhibit A. The Water Right authorizes a diversion rate of 2.38 cubic feet per second (cfs) and 642 acre-feet per year (afa). The Water Right is appurtenant to and has been beneficially used to irrigate 142.5 acres on Seller's property, also identified under the Water Right as the authorized place of use.

B. Seller desires to sell and Buyer desires to buy a portion of the Water Right that is appurtenant to 2.8 acres of the irrigated lands within the Water Right's authorized place of use, identified by Seller pursuant to Section 1.1 below.

COVENANTS

NOW THEREFORE, in consideration of the recitals, the mutual covenants, representations and warranties contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Property Purchased. Seller hereby agrees to sell to Buyer, and Buyer agrees to buy from Seller, on the terms and conditions herein specified, a portion of Water Right #63-7194 appurtenant to 2.8 acres within the Water Right's authorized place of use described as follows (hereinafter referred to as the "Purchased Right"):

<u>Quantity:</u>	<u>Acres / Place of Use:</u>
(0.05 cfs / 12.6 afa)	2.8 acres (SENE Section 21, Township 1 North, Range 1 West, Ada County, Idaho)

2. Property Retained. Seller expressly reserves and retains, and is not conveying any part of the remaining portion of Water Right #63-7194 that will remain appurtenant to the 139.7 acres within the Water Right's authorized place of use owned by Seller, described as follows:

<u>Quantity:</u>	<u>Acres / Place of Use:</u>
(2.33 cfs / 629.4 afa)	139.7 acres (NENE, NWNE, SWNE, SENE, Section 21, Township 1 North, Range 1 West, Ada County, Idaho)

CONTRACT FOR SALE OF A WATER RIGHT

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Buyer's Initials: *JS*

Seller's Initials: *JS*

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FEB 10 2005

WATER RESOURCES
WESTERN REGION

ATTACHMENT A - 63-32052

3. Purchase Price. The Purchase Price for the relevant portion of Water Right #63-7194 identified above (.05 cfs / 12.6 afa / 2.8 acres) shall be [REDACTED] dollars [REDACTED], payable as follows:

a. Down Payment. The sum of [REDACTED], which equals 20% of the purchase price, shall be paid down upon execution of this Agreement, receipt of which is hereby acknowledged. This down payment shall be credited against the purchase price at Closing. Seller shall refund the money to Buyer in the event the Idaho Department of Water Resources (IDWR) denies the transfer contemplated in Section 5.

b. Balance of Purchase Price. [REDACTED], being the Purchase Price less the down payment, shall be due and payable to Seller at Closing.

4. Closing.

a. Closing Date. Within fourteen (14) days of IDWR's final approval of the transfer application, the Parties shall conclude and finalize the purchase and sale of the Purchased Right ("Closing"). The Closing shall take place at the office of Barker Rosbalt & Simpson LLP, located at 205 North 10th St., Boise, Idaho, or at such other escrow agent designated by Buyer in writing ("Closing Agent") on a date mutually convenient for Buyer and Seller. Buyer and Seller shall work expeditiously to conclude the Closing.

b. Documents to be Delivered at Closing. Buyer and Seller shall execute (with acknowledgement, if needed) and deposit into escrow with Closing Agent all instruments, documents and the remaining balance (\$[REDACTED] in current, certified funds) necessary to complete the purchase and sale in accordance with this Agreement, or reasonably requested by the Closing Agent. The documents that Seller shall deliver to Buyer at Closing shall include, but not be limited to: (i) a Water Right Grant Deed in the form of the specimen attached to this Agreement as Exhibit B; (ii) a Notice of Change of Ownership confirming Buyer's ownership of the Purchased Right and the assignment of the appropriate portion of the Snake River Basin Adjudication Claim for the Purchased Right, and (iii) any other documents reasonably requested to confirm the conveyance of the Purchased Right.

c. Actions of Closing Agent. The Closing Agent shall close the transaction as soon as it has received all instruments, documents and monies necessary to complete the purchase and sale of the Purchased Right in accordance with this Agreement, including receipt of a final transfer approval by IDWR. Upon Closing, the Closing Agent shall record the Water Right Grant Deed, disburse the funds owing to Seller, and provide all instruments and documents to the Party entitled thereto.

d. Fees and Costs of Closing. The cost of the Closing Agent's Closing fees and recording relating to the transaction contemplated herein shall be equally divided between Seller and Buyer. All other expenses not specifically referenced in this

Buyer's Initials: [Signature]

Seller's Initials: [Signature]

Agreement and incurred by Seller or Buyer with respect to this transaction shall be borne and paid exclusively by the Party incurring the same, without reimbursement.

5. Transfer of Purchased Right.

a. Application to IDWR. It is understood and agreed, by and between the Parties, that Buyer intends to immediately file an application for transfer with IDWR. The Buyer shall have the right to file an application for transfer of the Purchased Right with IDWR. The application for transfer may entail a change to the place of use, nature of use, time of use, and point and means of diversion as Buyer determines; in the alternative, it may entail an application for a new water right permit in which the retirement or other approved use of the Purchased Right will be used for mitigation, or a similar purpose.

b. Cooperation with Transfer Efforts. Seller hereby grants to Buyer permission to make said transfer and agrees to sign any documentation to that effect required by IDWR, pertaining to said transfer. At Buyer's request, Seller shall cooperate with Buyer in Buyer's pursuit of any such transfer, and shall provide Buyer with any information that Seller has concerning the Water Right that Buyer may reasonably request in pursuit of the transfer. All matters pertaining to said transfer, including preparation of the application and all costs associated with the transfer proceeding, shall be the responsibility of Buyer. Buyer shall reimburse Seller for any attorney or consultant fees Seller incurs as a result of responding to such requests; however, Seller shall be entitled to receive such reimbursement only if Seller provides written demand for it within thirty (30) days after such expenses are billed to Seller from such attorney or consultant. Buyer shall pay such fees within thirty (30) days after receiving a timely demand.

c. IDWR Approval or Denial of Transfer. Buyer shall request IDWR provide a notice of preliminary approval of the transfer to Buyer and Seller. Lacking any protests, the transfer should become effective fourteen (14) days after IDWR's final approval. If IDWR's preliminary approval notice indicates IDWR will grant said transfer as applied for, or if the approval should reduce the quantity of the said water right it would allow to be transferred, and Buyer should accept said reduction, and continue with the transfer, then the amount of the reduction of the water right will be borne by the Buyer, without any reimbursement by Seller to Buyer. If IDWR's preliminary approval notice indicates IDWR will deny said transfer, for any reason, the Parties shall not be obligated to close the sale pursuant to Section 4 of this Agreement.

d. Failure to Close After IDWR Final Approval. If Buyer fails to close the sale for any reason within fourteen (14) days of IDWR's final approval of the transfer application, Buyer hereby authorizes Seller to request IDWR to rescind the transfer. In that event, Buyer also agrees that the transfer is null and void. Buyer further agrees that Seller's presentation of a duly signed and executed copy of this Agreement to IDWR, along with Buyer's failure to present an executed Water Right Grant Deed from Seller, shall constitute irrefutable evidence of Buyer's failure to close.

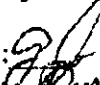
6. Protection of Purchased Right / 2005 Irrigation Season and Thereafter. Until final approval of the transfer by IDWR, Seller is authorized to continue to use the Purchased Right on the Water Right's authorized place of use for irrigation purposes during the 2005 irrigation season or any time thereafter. However, should IDWR finally approve the transfer during the 2005 irrigation season or at any time thereafter, Seller shall immediately comply with all conditions of the transfer approval, including ceasing to divert the Purchased Right.

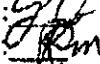
7. Seller's Representations and Warranties. Seller hereby represents and warrants to Buyer, as of the effective date of this Agreement and again as of the closing for the Purchased Right, as follows:

- a. Authority. Seller owns the Purchased Right in fee simple. Seller has the full legal right, power and authority to enter into and perform this Agreement.
- b. Good Title. Seller has good and marketable title to the Purchased Right, and Seller shall remove, or cause to be removed, all liens, claims, or encumbrances, whether of record or not, upon or affecting the Purchased Right on or before closing.
- c. Appurtenance. The Purchased Right is appurtenant to and has been beneficially used as the sole water source to irrigate the authorized place of use on Seller's property.
- d. Not Forfeited. To the best of Seller's knowledge, the Purchased Right has not been forfeited or abandoned in whole or in part, has been placed to continual beneficial use on the Seller's property, and has never been subject to a continuous five-year period of non-use except as such non-use may have occurred while the Purchased Right was in an appropriate water bank, claimed in the Snake River Basin Adjudication, or the appurtenant place of use was enrolled in a government annual grain base or long-term crop land set-aside program, or such non-use may have occurred by reason of any other applicable defense set forth in Idaho Code § 42-223 that protected the Purchased Right from forfeiture.
- e. Snake River Basin Adjudication Status. The Seller filed a water right claim for the Purchased Right in the Snake River Basin Adjudication (SRBA), but makes no representations or warranties regarding the outcome of that proceeding as it might affect the Purchased Right. A review of IDWR's electronic records presently reveals that IDWR will recommend to the SRBA District Court that the Water Right should be decreed as claimed by Seller. See Exhibit C. IDWR's formal recommendation of the Water Right, however, may change when it is ultimately forwarded to the Court.
- f. Broker. Seller has not engaged or dealt with any broker or finder in connection with the sale of the Purchased Right.
- g. No Other Warranty. Seller makes no other guarantees or warranties as to the Purchased Right, its yield upon transfer, or its transferability. Seller further disclaims any warranty as to the Purchased Right's availability in times of shortage, including any

CONTRACT FOR SALE OF A WATER RIGHT

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Buyer's Initials: 

Seller's Initials: 

curtailment that may be ordered by IDWR to satisfy other senior ground or surface water rights.

8. Buyer's Representations and Warranties. Buyer hereby represents and warrants to Seller that Buyer has the legal power, right and authority to enter into this Agreement and to perform Buyer's obligations hereunder and has not engaged any broker or finder in connection with the purchase of the Purchased Right.

9. Termination / Remedies

a. Buyer's Termination for Default. Buyer may terminate this Agreement for material default by Seller. In the event of such default, Buyer shall provide a written demand to Seller and provide Seller with thirty (30) days to cure. If Seller fails to cure, Buyer may terminate this Agreement upon written notice to Seller.

b. Buyer's Remedy on Default. If Seller breaches this Agreement, Buyer's remedy for Seller's default, other than any default resulting from IDWR's reduction or rejection of the transfer application, shall be limited to: 1) ten percent (10%) of the total Purchase Price which equals [REDACTED], 2) plus the return of the down payment ([REDACTED]) identified in Section 3.a.

c. Seller's Termination for Default. Seller may terminate this Agreement for material default by Buyer. In the event of such default, Seller shall provide a written demand to Buyer and provide Buyer with thirty (30) days to cure.

d. Seller's Remedy on Default. If Buyer breaches this Agreement, Seller's remedy for Buyer's default, other than any default resulting from IDWR's reduction or rejection of the transfer application, shall be limited to: 1) the right to request IDWR to rescind the transfer; 2) plus the retention of the down payment ([REDACTED]) identified in Section 3.a.

10. Attorneys' Fees. In any suit, action or appeal therefrom, to enforce this Agreement or any term or provision hereof, or to interpret this Agreement, the prevailing Party shall be entitled to recover all its costs reasonably incurred therein (and on appeal), including reasonable attorneys' fees.

11. Notices. Any notice under this Agreement shall be in writing and be delivered in person, by U.S. Mail, by private courier, or by facsimile. Notice shall be provided to the following:

Seller

Ralph Mellin
c/o Mellin Properties L.P.
4500 North Tumbleweed
Boise, Idaho 83713
Telephone: (208) 322-7500

Buyer

Gregory B. Johnson
Tuscany Development, Inc.
P.O. Box 344
Meridian, Idaho 83680
Telephone: (208) 888-9946

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Buyer's Initials: GBJ

Seller's Initials: RM

Seller's Attorney

Travis L. Thompson
 Barker Rosholt & Simpson LLP
 113 Main Ave. West, Ste. 303
 Twin Falls, Idaho 83301-6167
 Telephone: (208) 733-0700
 Facsimile: (208) 735-2444

Buyer's Representative

Terry Scanlan
 SPF Water Engineering LLC
 600 East River Park Lane, Ste. 105
 Boise, Idaho 83706
 Telephone: (208) 383-4140
 Facsimile: (208) 383-4156

12. Entire Agreement. This is the entire agreement of Buyer and Seller with respect to matters covered hereby and supercedes all prior agreements between them, written or oral. This Agreement may be modified only in writing, signed by Buyer and Seller.

13. Counterparts. This Agreement may be executed in any number of counterparts for the convenience of the Parties, all of which, when taken together and after execution by all Parties hereto, shall constitute one and the same Agreement.

14. Idaho Law. This agreement shall be governed by the laws of the State of Idaho.

15. Severability. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision hereof.

16. Successors. This Agreement is for the benefit only of the Parties hereto and shall inure to the benefit of and bind the heirs, personal representatives, successors and assigns of the Parties hereto.

17. Effective Date. The Effective Date of this Agreement shall be the date on which both Buyer and Seller executed this Agreement, if executed on the same day, or the later date, if executed on different days.

IN WITNESS WHEREOF, the undersigned have duly executed this Agreement.

DATED this eight day of February, 2005

SELLER:

Mellin Properties Limited Partnership

Ralph Mellin
 Ralph Mellin, General Partner

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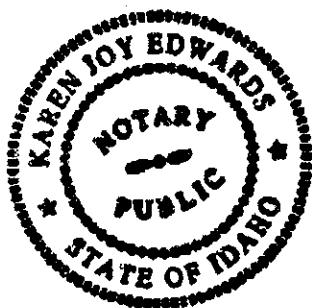
Buyer's Initials: TS

Seller's Initials: RM

STATE OF IDAHO)
) ss.
County of Ada)

On this 8th day of February, 2005, before me, a Notary Public for said County and State, personally appeared Ralph Mellin, known or identified to me, to be the person whose name is subscribed to the within instrument, and acknowledged to me that he/she 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.



Karen Joy Edwards
NOTARY PUBLIC FOR IDAHO
Residing at: Meridian, Idaho
My commission expires: 8/2/06

DATED this 7th day of Feb., 2005

BUYER:

TUSCANY DEVELOPMENT, INC.

Gregory B. Johnson
Gregory B. Johnson, President

STATE OF IDAHO)
) ss.
County of Ada)

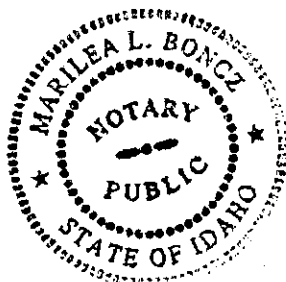
On this 7th day of Feb., 2005, before me, a Notary Public for said County and State, personally appeared Gregory B. Johnson, known or identified to me, to be the person whose name is subscribed to the within instrument, and acknowledged to me that he/she executed the same.

CONTRACT FOR SALE OF A WATER RIGHT

Page 7 of 7

Buyer's Initials: GA
Seller's Initials: RM

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



Marilea L. Boncz
NOTARY PUBLIC FOR IDAHO
Residing at: Meridian Idaho
My commission expires: 8/30/08

CONTRACT FOR SALE OF A WATER RIGHT

Page 8 of 8

Buyer's Initials: GO
Seller's Initials: MB

**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

June 9, 2005

TUSCANY DEVELOPMENT INC
PO BOX 344
MERIDIAN ID 83680

RE: Permit No. 63-32052

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.

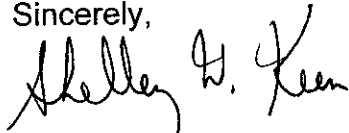
The Department will send you a 'Proof Due Notice' approximately 60 days prior to the above referenced date requesting you to file either a Proof of Beneficial Use form or a Request for Extension of Time form.

The right to drill a well is not a part of this permit to appropriate water. Beginning in July of 1987, a statute was enacted which requires a drilling permit for new well construction and deepening of existing wells. If the well(s) proposed for use under this water right permit were drilled or deepened after July 1, 1987, a separate drilling permit must be obtained from this Department. Please contact the Ground Water Protection Section located here at this office or our regional office nearest you.

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,

A handwritten signature in black ink, appearing to read "Shelley W. Keen". The signature is fluid and cursive, with the first name "Shelley" being more prominent.

Shelley W. Keen

Water Rights Supervisor

SWK:klt

Enclosure(s)

cc: SPF WATER ENGINEERING LLC

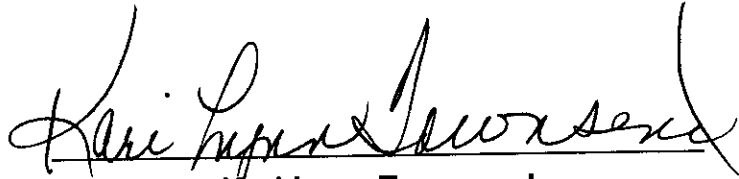
CERTIFICATE OF SERVICE

I hereby certify that on June 9, 2005 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. 63-32052

**SPF WATER ENGINEERING LLC
C/O TERRY SCANLAN
600 E RIVER PARK LN STE 105
BOISE ID 83706**

**TUSCANY DEVELOPMENT INC
PO BOX 344
MERIDIAN ID 83680**


**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

63-32052

1. kwalker 5/6/2005 POD

Comment: Updated shape

2. kwalker 5/6/2005 POD

Comment: Updated shape

3. kwalker 5/6/2005 POD

Comment: Updated shape

4. kwalker 5/6/2005 POD

Comment: Updated shape

5. kwalker 5/6/2005 POD

Comment: Updated shape

6. kwalker 5/6/2005 POD

Comment: Updated shape

7. kwalker 5/6/2005 POD

Comment: Updated shape

8. kwalker 5/6/2005 POU

Comment: Updated Shape

9. slester 2/3/2005 9:17:28 AM Special Administration Area Notes

Comment: Special Administration Areas : Basin 63 processing delay

Exempt: Y

Reason: Mitigation Plan

Doc Attached: Y

Explanation: retire portion of primary ground water right 63-7194

10. slester 2/3/2005 9:43:31 AM Additional Information Supporting Application

Comment:

Mitigation Plan or acceptance form: Attached

11. slester 2/14/2005 Legal Notice Remarks

Comment: Mitigation is proposed for consumptive use. Mitigation includes a reduction in use under existing ground water irrigation right no. 63-7194 located south of Kuna. Storage includes 6 water amenity ponds in Tuscany Subdivision southeast of Victory and Locust Grove Roads in Meridian. Shallow ground water plus a proposed well will be used to fill and maintain the ponds. Water bearing zone to be appropriated is from 0 to 250 feet.

12. slester 2/3/2005 Comment/Analysis

Comment: This application seeks to resolve a 2004 NOV regarding filling a few lined ponds adjacent to the NMID canal system. Most of the storage occurs in SENW with marginal amounts in the other 3 parts of the NW 1/4. Property aka Tuscany Subdivision (Tuscany Lakes 2-4 and Messina Hills 3) located along the Ridenbaugh Canal and Eight Mile Lateral. The proposed well will maintain the ponds after they are initially filled under a water bank lease. It is possible that some shallow ground water

will fill the ponds to partial capacity, resulting in pond centers being included as P/Ds. That is why the water bearing zone is listed as shown. About 3 acres of primary ground water right 63-7194 will be retired to mitigate consumptive use from the surface area of the ponds. A comment letter will be sent to NMID since it filed the original complaint against pond development in the subdivision.

13. slester 2/14/2005 Comment/Analysis

Comment: A valid mitigation plan was filed, allowing processing to resume. Initial filling of the ponds will be covered by a water bank lease. Consumptive use from the ponds will be covered by abandoning a 2.8 acre portion of primary ground water irrigation right 63-7194 (no overlap) prior to diverting water under the proposed right. The mitigation right is located about 6 miles south of Kuna within Basin 63. The mitigation right is fully recommended in the SRBA.

A contract between the current owner of the mitigation right and the applicant authorizes this plan (application attachment A).

14. slester 4/18/2005 2:17:33 PM Special Administration Area Notes

Comment: Special Administration Areas : Water District 63

Exempt: N

Reason: Ground Water

Doc Attached:

Explanation: Ponds initially filled with shallow ground water in Ten Mile Creek drainage tributary to Boise River below Star. That water remains subject to watermaster control. Mitigated by deeper ground water (well) that is not under similar jurisdiction at this time.

15. kwalker 5/12/2005 Permit Review

Comment: Permit has proposed mitigation plan. Have prepared approval as recommended by regional office. Application does not fall within any problem areas.

16. kwalker 5/16/2005 Points of Diversion

Comment: I called Terry Scanlan to find out why the ponds were being included as points of diversion since the file did not seem to cover that. The ponds, even though they will be lined with bentonite, will still get seepage water due to the high water table in the area. Terry thinks the seepage into the ponds will probably exceed any evaporation losses that would occur. Will leave the ponds on as points of diversion.

MEMORANDUM

TO: File

FROM: Steve Lester 

DATE: April 18, 2005

RE: Application 63-32052 Conditions of Approval

The application for a subdivision pond amenity system resulted from a notice of violation following a complaint by NMID last April. The site is near the junction of the Ridenbaugh Canal and Eightmile Lateral southeast of Meridian. Surface water, and therefore most likely shallow ground water, is tributary to the Boise River below Star. The proposed subdivision is several miles south of the river.

Shallow ground water will be used for at least some of the initial filling of the ponds. This will be mitigated for river purposes with a rental pool lease. After that, a proposed well with a 150 to 250 feet water bearing zone will be used to refill the ponds. Use from the well will be mitigated by abandoning an equivalent portion of right 63-7194 (see attached spreadsheet and notes). The mitigation plan looks viable.

NMID received a comment letter but did not protest. The applicant and the irrigation district resolved their differences in two ways that we know of: one, the applicant will pay to line the Ridenbaugh Canal along a portion of the site; and two, the well will be cased to at least 150 feet. These methods were designed to protect NMID water rights, including canal structure (concerned about bank failure from ponds to be developed so close to canals).

Those parties also agreed that the well will be located somewhat differently but within the same tract originally proposed – not a P/D location change.

I overlooked sending a comment letter to the Boise River Watermaster. That should be okay for this shallow ground water ultimately tributary to the river but located far beyond the river corridor. The deeper ground water remains outside watermaster regulation at this time.

As in Hidden Island Subdivision Application 63-31972, possible future mitigation for fish flows should not be needed but probably will be required. That condition has therefore been included.

Proposed Conditions of Approval

Standard conditions, including 046 for proposed well construction.

Allow 5 years.

Remains subject to Watermaster controls for Boise River Water District #63 (controls not needed yet).

Remains subject to possible future measurement and reporting.

Remains subject to possible future mitigation for downstream fish flows.

Water bearing zone 0-250 feet although limited to 150-250 feet for the well.

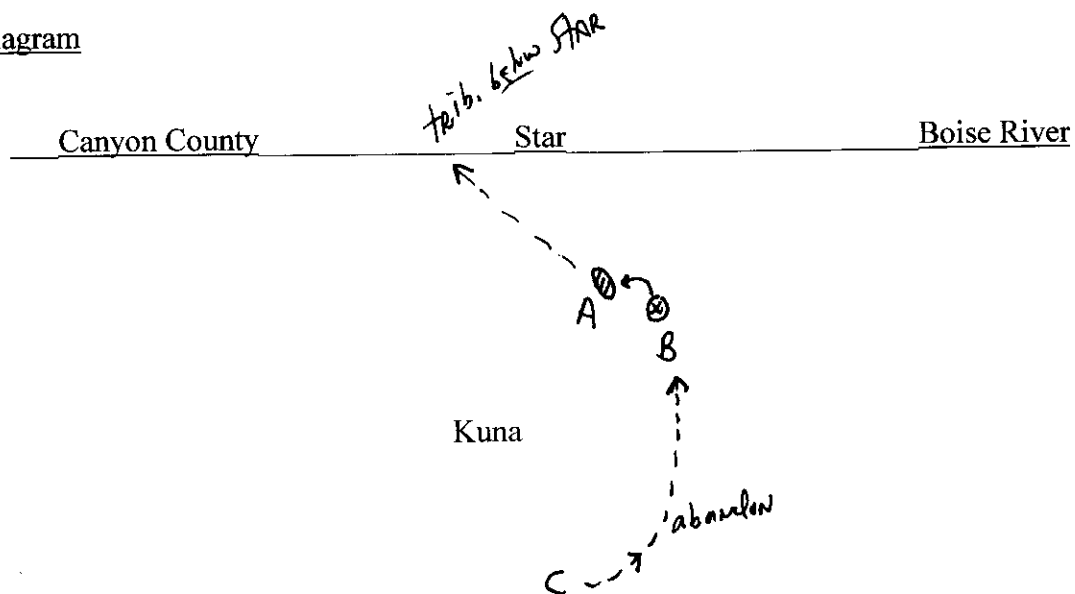
Proposed well must be cased to at least 150 feet.

Mitigation via water bank/rental pool is required for initial fill of the ponds.

Mitigation for consumptive use from the ponds is required (prior to diversion or at the time of filing of proof of beneficial use?) by abandonment of 0.05 cfs/2.8 acres of irrigation under right no. 63-7194.

Property aka Tuscany Subdivision.

Diagram



A - initial fill of ponds from rental pool

B - refill ponds with deeper well water

C - retire irrigation under primary ground water right to mitigate refills

Proposed

SPLITS FROM WATER RIGHT 63-7194 MELLIN PROPERTIES

NAME OF SPLIT	AGENT	DATE FILED	RIGHT NUMBER MITIGATED OR TRANSFER NUMBER	TRANSFER OR MITIGATION	DIVERSION RATE REMOVED(cfs)	DIVERSION VOLUME REMOVED(afa)	ACRES REMOVED
ORIGINAL RIGHT	N/A	5/9/1977	N/A	N/A	2.38	642	142.5
TUSCANY DEVELOPMENT CORP	SL	11/12/2004	63-32052	MITIGATION	0.06	12.6	2.8
EAGLE PRECAST LDS CHURCH	LG DAN	2/25/2005 4/20/2004	63-32084 UNKNOWN	MITIGATION TRANSFER	0.03 0.03	6.75 7.2	1.5 1.6
					0.00	0	0
					0.00	0	0
					0.00	0	0
					0.00	0	0
					0.00	0	0
					0.00	0	0
					0.00	0	0
					0.00	0	0
					0.00	0	0
					0.00	0	0
					0.00	0	0
					0.00	0	0
					0.00	0	0
					0.00	0	0
					0.00	0	0
REMAINING RATES AND ACRES					2.26	615.45	136.6

*

PLEASE NOTE: In order to calculate diversion rate and volume simply add in the amount of acres being retired.

* Tuscany mitigation

- Abandon 2.8 acres / 0.05 cfs / 12.5 AFA for ponds retired per well in 63-32052.
- Mellin - seller
- Tuscany - buyer
- 63-7194 - claimed as licensed 1989
 - previous grow. area c 6 miles south of Kuna, no overlap
 - 1987 aerial photo, looks fully irrigated
- good plan

Regional office tracking spreadsheet as more pieces of 63-7194 are marketed.

-R 4/18/05

RECEIVED

MAR 22 2005

WATER RESOURCES
WESTERN REGION

**RINGERT
CLARK**
CHARTERED
LAWYERS

Laura E. Burn
Jeffrey R. Christenson
D. Blair Clark
Michael J. Doolittle
S. Bryce Farris
Patrick D. Forey
David Hammerquist
Charles L. Horsinger
Joseph B. Jones
James P. Kaufman
Jennifer Reid Mahoney
James G. Reid
William F. Ringert
Daniel V. Steenson
Alynn L. Sweeney
Samuel Kaufman (1921-1986)

March 21, 2005

Terry M. Scanlan
SPF Water Engineering, LLC
800 East River Park Lane, Suite 105
Boise, Idaho 83706

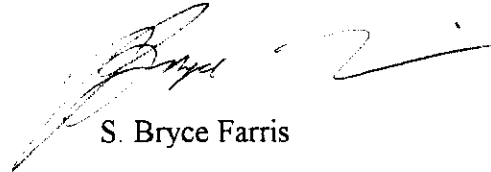
Re: Application for Water Right Permit 63-32052 - Tuscany Development Corporation

Dear Terry:

Thank you for the information in your letter dated March 16, 2005. Based upon your statements in the letter that you will move the location of the well site to approximately 700 feet to the west and that the well will be cased to a minimum depth of 150 feet, Nampa & Meridian Irrigation District has no objections to Tuscany Development Corporation's application.

Please feel free to contact me if you have any questions or comments regarding this matter.

Yours very truly,



S. Bryce Farris

SBF:kw

cc: NMID
John Westra - IDWR



RECEIVED

March 16, 2005

MAR 18 2005

WATER RESOURCES
WESTERN REGION

Bryce Farris
Ringert Clark
P.O. Box 2773
Boise, ID 83701

Subject: Application for Water Right Permit 63-32052 – Tuscany Development Corporation

Dear Bryce:

In response to your telephone inquiry regarding Application for Permit 63-32052, I have enclosed a map showing a proposed location for the well that will be used to maintain the ponds at Tuscany Subdivision. The well was originally proposed to be located at the east end of the ponds. However, you have indicated that Nampa & Meridian Irrigation District will oppose any well locations near the end of the lined section of the Ridenbaugh Canal. As a result, we have move the proposed well site approximately 700 feet to the west, so that it is located along the Eightmile Lateral. This location is less convenient for our project, but Tuscany Development is willing to make this concession to avoid a protest of the application for permit.

The application for permit lists a water-bearing zone of 0 to 250 feet. Specifically, we plan to construct a well that will draw water from aquifer zones located between 150 feet and 250 feet depth. The well will be cased to a minimum depth of 150 feet to avoid direct depletion from the shallow water table in the vicinity of the canal. After construction, we anticipate that the well can be used to add water to the ponds. I understand from our telephone conversation that Nampa & Meridian Irrigation District has agreed that a well that is constructed with solid casing to a minimum depth of 150 feet will be acceptable.

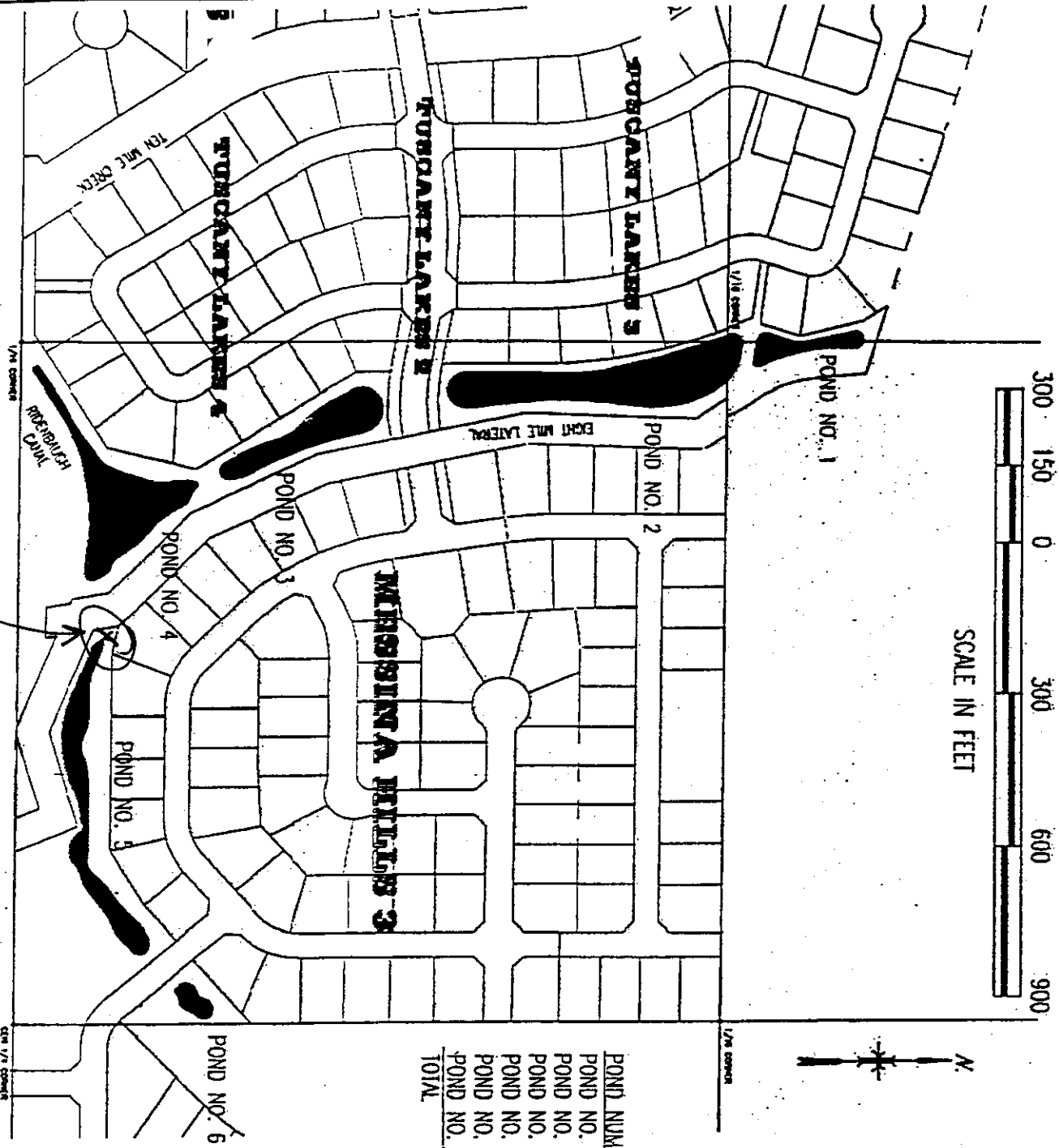
Please contact me with any questions.

Sincerely,

Terry M. Scanlan, P.E.

Cc: Greg Johnson, Shay Bertola - Tuscany
Ben Thomas, Dean Briggs – Briggs Engineering
John Westra - IDWR
Mike Spink – Spink & Butler

Well location



POND NUMBER	AREA (SQ)
POND NO. 1	7,510
POND NO. 2	41,306
POND NO. 3	17,407
POND NO. 4	29,515
POND NO. 5	21,332
POND NO. 6	3085
TOTAL	120,155

REVISION : SHEET : 1 OF 1 EXHIBIT 21108\POND\EXHIBIT.CWG	TUSCANY SUBDIVISION		BRIGGS ENGINEERING, INC. ENGINEERS PLANNERS SURVEYORS 1800 W. OVERLAND ROAD • BOISE, IDAHO 83705 • (208)344-9700 These drawings, or any portion thereof, shall not be used on any Project or extensions of this Project except by written agreement from Briggs Engineering, Inc.
	POND EXHIBIT		
DWG DATE: 06/21/04 BPT	DWG NO. 21109	SCALE: 1" = 300'	

The Idaho Statesman

RECEIVED

MAR 14 2005

P.O. Box 40, Boise, Idaho 83707-0040

WATER RESOURCES
WESTERN REGION

LEGAL ADVERTISING PROOF OF PUBLICATION

Account #	DTL#	Identification	Amount
047628	1238527	APPLICATION	\$148.50
Attention:		P.O. #	Run Dates
SUE KREGER			MARCH 3, 10, 2005
IDAHO DEPT. WATER RESOURCES WEST 2735 AIRPORT WY. BOISE, ID 83705			Number of Lines 2 X 41
			Affidavit 1
			Legal # 21808

LEGAL NOTICE

The following application(s) have been filed to appropriate the public waters of the State of Idaho:

63-32052
TUSCANY DEVELOPMENT INC
PO BOX 344
MERIDIAN ID 83680

✓ sk

Point(s) of Diversion	NENW S29 T03N R01E ADA County	Source GROUND WATER
Point(s) of Diversion	SENW S29 T03N R01E ADA County	Source GROUND WATER
Point(s) of Diversion	SENW S29 T03N R01E ADA County	Source GROUND WATER
Point(s) of Diversion	SENW S29 T03N R01E ADA County	Source GROUND WATER
Point(s) of Diversion	SENW S29 T03N R01E ADA County	Source GROUND WATER
Point(s) of Diversion	SENW S29 T03N R01E ADA County	Source GROUND WATER
Point(s) of Diversion	SENW S29 T03N R01E ADA County	Source GROUND WATER
Use:	AESTHETIC STORAGE 01/01 To 12/31	16.8 AFA
Use:	DIVERSION TO STORAGE 01/01 To 12/31	0.2 CFS
Total Diversion:		0.2 CFS

Date Filed: 11/12/2004
Place Of Use: AESTHETIC STORAGE
T03N R01E S29 NENW NWNW SWNW SENW

Remark: Mitigation is proposed for consumptive use. Mitigation includes a reduction in use under existing ground water irrigation right no. 63-7194 located south of Kuna. Storage includes 6 water amenity ponds in Tuscany Subdivision southeast of Victory and Locust Grove Roads in Meridian. Shallow ground water plus a proposed well will be used to fill and maintain the ponds. Water bearing zone to be appropriated is from 0 to 250 feet.

Permits will be subject to all prior water rights. Protests may be submitted based on the criteria of Sec 42-203A, Idaho Code.

Any protest against the approval of this application must be filed with the Director, Dept. of Water Resource, Western Region, 2735 Airport Wy, Boise ID 83705 together with a protest fee of \$25.00 for each application on or before 03/21/2005. The protestant must also send a copy of the protest to the applicant.

KARL J DREHER, Director

Pub. Mar. 3,10, 2005

21808

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 issue of: MARCH 3, 2005

ending issue of: MARCH 10, 2005

Janice Hildreth

STATE OF IDAHO)

.ss

COUNTY OF ADA)

On this 10 day of MARCH in the year of 2005

before me, a Notary Public, personally appeared before me 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.

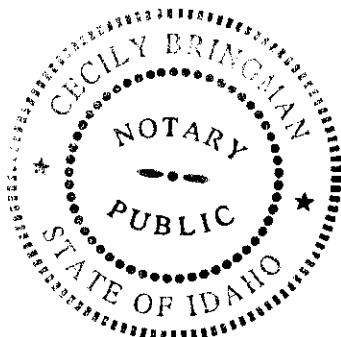
Cecily Brungman

Notary Public for Idaho

Residing at: Boise, Idaho

My Commission expires:

8-27-09





State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190

FAX (208) 334-2348

February 24, 2005

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

JOHN ANDERSON
NAMPA MERIDIAN IRRIG DIST
1503 FIRST ST S
NAMPA ID 83651-4395

Re: Water Right Application(s)

Enclosed is a copy of an application(s) that may be of interest to you. Please review the application(s) submit any comments you may have.

This office normally completes the processing of an application within a six-week period and is required to take final action shortly thereafter. However, if you desire to file a formal protest against the approval of this application(s), your written protest along with the \$25.00 protest fee must be received in this office by March 21, 2005.

If you have any questions regarding the application, please contact this office.

Sincerely,

A handwritten signature in cursive script that reads "Sue Kreger".

Sue Kreger
Administrative Assistant

Encl. Copy of Application

**IDAHO DEPARTMENT OF WATER RESOURCES
WESTERN REGION
2735 AIRPORT WAY
BOISE ID 83705**

February 23, 2005

Legal Notice Department
IDAHO STATESMAN
PO BOX 40
BOISE ID 83707

RE: Application for Permit No. 63-32052

Dear LEGAL NOTICE DEPARTMENT:

Enclosed you will find a legal notice which we wish to have published in your newspaper on the dates indicated (once a week for two consecutive weekly issues). If you cannot publish the notice on the proposed dates, please contact us immediately.

An affidavit of publication must be submitted to the Department along with the publication bill. Please send the affidavit and bill to this office before 03/21/2005. Your cooperation is appreciated.

Sincerely

Sue Kreger
Administrative Assistant

The following application(s) have been filed to appropriate the public waters of the State of Idaho:

63-32052

TUSCANY DEVELOPMENT INC
PO BOX 344
MERIDIAN ID 83680

Point(s) of Diversion	NENW	S29	T03N R01E	ADA County	Source GROUND WATER
Point(s) of Diversion	SENW	S29	T03N R01E	ADA County	Source GROUND WATER
Point(s) of Diversion	SENW	S29	T03N R01E	ADA County	Source GROUND WATER
Point(s) of Diversion	SENW	S29	T03N R01E	ADA County	Source GROUND WATER
Point(s) of Diversion	SENW	S29	T03N R01E	ADA County	Source GROUND WATER
Point(s) of Diversion	SENW	S29	T03N R01E	ADA County	Source GROUND WATER
Point(s) of Diversion	SENW	S29	T03N R01E	ADA County	Source GROUND WATER

Use: AESTHETIC STORAGE 01/01 To 12/31 16.8 AFA

Use: DIVERSION TO STORAGE 01/01 To 12/31 0.2 CFS

Total Diversion: 0.2 CFS

Date Filed: 11/12/2004

Place Of Use: AESTHETIC STORAGE

T03N R01E S29 NENW NWNW SWNW SENW

Remark: Mitigation is proposed for consumptive use. Mitigation includes a reduction in use under existing ground water irrigation right no. 63-7194 located south of Kuna. Storage includes 6 water amenity ponds in Tuscany Subdivision southeast of Victory and Locust Grove Roads in Meridian. Shallow ground water plus a proposed well will be used to fill and maintain the ponds. Water bearing zone to be appropriated is from 0 to 250 feet.

Permits will be subject to all prior water rights. Protests may be submitted based on the criteria of Sec 42-203A, Idaho Code.

Any protest against the approval of this application must be filed with the Director, Dept. of Water Resource, Western Region, 2735 Airport Wy, Boise ID 83705 together with a protest fee of \$25.00 for each application on or before 03/21/2005. The protestant must also send a copy of the protest to the applicant.

KARL J DREHER, Director

Published in the Idaho Statesman on March 3 and 10, 2005.



RECEIVED

FEB 10 2005

WATER RESOURCES
WESTERN REGION

February 8, 2005

Steve Lester
Idaho Department of Water Resources
2735 Airport Way
Boise, ID 83705

Subject: Application for Water Right Permit – Tuscany Development Corporation

Dear Steve:

Enclosed on behalf of Tuscany Development Corporation is a copy of the water right purchase agreement associated with mitigation of the proposed permit for aesthetic ponds at Tuscany Subdivision near Meridian. The ponds will be mitigated by retirement of a 2.8-acre portion of water right 63-7194. We anticipate that retirement of the 2.8 acre portion of water right 63-7194 will be a condition of the permit approval. As discussed by telephone today, we understand that the application for water right permit will likely be advertised on March 3 and 10.

Please contact me with any questions.

Sincerely,

Terry M. Scanlan, P.E.

Cc: Greg Johnson
Dean Briggs
Mike Spink

Lester, Steve

From: Lester, Steve
Sent: Friday, February 04, 2005 8:31 AM
To: 'Terry Scanlan'
Subject: RE: Application for Permit for Tuscany Development

Terry:

Point of diversion - Since it is possible that at least initially some shallow ground water will be obtained independent of the well, suggest it is best to leave the application as it is, listing all ponds as possible p/d plus the well with w.b. zone as 0-250 feet. That covers all the possibilities without having to later amend the permit.

Applicant name - Will consider the application amended to show T. D. Incorporated based on your email since that is such a minor correction.

Mitigation plan - We cannot process the application without documentation of a viable plan. A verbal agreement is not a viable plan. We need written confirmation from the applicant &/or current owner of that right that the appropriate portion of that right can and will be retired following permit approval but prior to diverting water under the permit. Short of outright ownership of the mitigation "shares" by the applicant, something like a purchase agreement contract with written consent of the current owner to allow retirement (in case the applicant will not own the mitigation shares before a new permit is used) should work.

Will delay processing until a viable mitigation plan is received. There is no need for any deadline at this time, allowing the application to remain in good standing while those details are worked out.

Let me know if you need more information on this one. Thanks for your help.

Steve

-----Original Message-----
From: Terry Scanlan [mailto:TScanlan@spfwater.com]
Sent: Thursday, February 03, 2005 5:15 PM
To: Lester, Steve
Subject: RE: Application for Permit for Tuscany Development

Steve -

Points of diversion - I understand that bentonite-amended soil lined ponds are proposed. Therefore the leakage rate (into or out of the ponds) should be low. The summer water table is apparently above the pond bottom (as you observed), but below the full pond level. Therefore, the ponds should not be gaining from shallow-groundwater after they are filled, as the gradient should be out of the ponds rather than into the ponds. However, they may initially fill partially with shallow groundwater. Can you give us some direction? Should we ignore the initial fill and list 75 to 250 feet, or leave it at 0 to 250 feet?

Mitigation Plan - We have obtained a verbal commitment from Ralph Mellin to purchase 2.8 acres of groundwater right 63-7194 as mitigation, but have been having a tough time getting a contract from him. I spoke with his attorney today who indicated that he thinks we have addressed all of Ralph's contractual concerns so that we should see a contract in a few days. Therefore, please proceed toward advertising as we will have a contract to you ASAP.

Applicant Name - Tuscany Development, Inc.

Thanks for your help.

Terry

-----Original Message-----

From: Lester, Steve [mailto:Steve.Lester@idwr.idaho.gov]

Sent: Thursday, February 03, 2005 4:35 PM

To: Terry Scanlan

Subject: Application for Permit for Tuscany Development

Terry:

I got this one data entered and ready for advertising for next round of legal notices plus completed a follow up letter to you. Just before mailing the letter I realized that a couple key things remain unclear. So I need to clear up 2 main points & 1 minor one.

1) Points of diversion - Ponds to be filled & maintained with well. Ponds to be lined. So appears shallow ground water naturally filling ponds will not be involved, correct? If that is correct, then ponds are not P/Ds as I originally thought - the only P/D is the well. Also, how can the water bearing zone be from 0-250 feet in that case since that zone implies shallow ground water in addition to the well? Sorry about any complications I caused by focusing on center of ponds as P/Ds ... I keep thinking of the typical excavated site obtaining shallow ground water, which was also the case during my field visits to the site last year.

2) Mitigation Plan - As you recall from the G & B Redimix application, we cannot process an application based on a "maybe mitigation plan." We need confirmation that a viable plan is in hand to issue an approval to avoid the appearance of speculation. Applicant will need to show some legal link to the mitigation right: purchase agreement or similar contract, something to show that some of the right actually will be retired, not might be retired.

3) Applicant name - Application lists Tuscany Development Corporation but business entity registration is Tuscany Development Inc., which is correct?

Again, sorry about the complications.

Steve



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NOV 12 2004

WATER RESOURCES
WESTERN REGION

November 9, 2004

John Westra
Idaho Department of Water Resources
2735 Airport Way
Boise, ID 83705

Subject: Application for Water Right Permit – Tuscany Development Corporation

Dear John:

Enclosed on behalf of Tuscany Development Corporation is an application for water right permit associated with the aesthetic ponds at Tuscany Subdivision near Meridian. The application proposes appropriation of 0.20 cfs of groundwater for diversion to storage and 16.8 acre feet of aesthetic storage in six ponds. The ponds total 2.76 acres in surface area and 16.8 acre feet in volume.

The ponds will be mitigated by retirement of a 2.8-acre portion of water right 63-7194. Tuscany is preparing to purchase to purchase a 2.8-acre portion of the water right and will forward a copy of the agreement to your office. We anticipate that retirement of the 2.8 acre portion of water right 63-7194 will be a condition of the permit approval.

Please contact me with any questions.

Sincerely,

Terry M. Scanlan, P.E.

Cc: Greg Johnson
Dean Briggs
Mike Spink



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190

FAX (208) 334-2348

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

August 9, 2004

TERRY SCANLAN
SPF WATER ENGINEERING LLC
600 E RIVER PARK LN STE 105
BOISE ID 83706

RE: Draft Application for Permit – Tuscan Development Corp.

Dear Terry:

I am responding for John Westra regarding your recent letter on the above referenced matter. The following thoughts are offered for your consideration.

Points of Diversion (P/D) - Assuming seven P/D will include six ponds and one well, the ¼ ¼ locations vary according to which map is used. First, please note a fairly recent detail in listing P/D location for an excavated¹ pond: the department considers P/D to be approximate center of pond to allow a single point to correspond with a digitized P/D point for ArcView mapping purposes (previously we listed an entire bottom surface area of a pond as P/D even if pond occurred in multiple tracts).

Based on the “single point” criteria, it appears from the topo map that P/Ds will be: 1 pond in NWNW, 1 pond in SWNW, 4 ponds and 1 well in SENW. From the subdivision plat with more detailed survey information (1/16 corners), the P/Ds will be: 1 pond NENW (or could be NWNW), 5 ponds and 1 well SENW. Which is the correct interpretation, recognizing some latitude in defining pond centers?

Storage volume – Subdivision plat includes the area of each pond for a total surface area of 120,155 square feet divided by 43,560 sq. ft. per acre. This equals 2.76 acres instead of 2.75 acres. The slightly higher area multiplied by the average depth yields 16.56 af, which should be rounded to 16.6 af per department standards (volume always to nearest 1/10 af). Alternately, it might be just as easy to round acres to 2.8 since department standards generally limit acres to nearest 1/10. In that case, volume is 2.8 x 6 or 16.8 af (see “Remarks” portion of letter regarding mitigation for about 2.8 acres of pond surface area).

¹ P/D is pond center for *excavated* pond. P/D is dam, berm or other physical works for pond formed by other means.

August 9, 2004

Page 2

Place of use (P/U) – As in the P/D discussion, the P/U varies by map. Instead of a single point, the entire pond area constitutes the P/U. From the topo map, this includes NWNW, SWNW and SENW. From the subdivision plat, this covers all four tracts in the NW ¼ (pond #2 barely in SWNW). Which is the correct interpretation?

Remarks – Tweak figures to show 2.76 acres and 16.6 af or 2.8 acres and 16.8 af. Since the ponds will constitute P/Ds along with the well, rephrase the second sentence – maybe such as “ponds will be kept full from a well.” Mitigation could be simplified by the “1:1 pond swap” the department has recognized recently. This means that the application could state that alfalfa was grown at the P/U for the right being offered for mitigation. Then, 2.8 acres (or 2.76 which would be treated as 2.8) would be retired from that right to cover evaporative losses from all the ponds. You would not need to include specific data or verification of alfalfa production at the mitigation right P/U, simply state this information in the application.

Mitigation has mostly taken two forms lately in the Treasure Valley, either a transfer application or an abandonment of a right or portion of a right. Both methods require ownership documentation to show the applicant has this authority. The legislature amended I. C. § 42-223 effective July 1, 2004, to allow recognition of mitigation through a plan rather than through either of the two methods just noted. The applicant's mitigation plan could include documentation of ownership (or consent of the owner if other than the applicant) with a request for x.xx cfs of irrigation to be changed to an equivalent amount for mitigation. If the mitigation plan were approved, the right proposed for mitigation would be recorded in the department's records as y.yy cfs for irrigation and x.xx cfs for mitigation. It's another way, probably easier, to reach the same point of approval plus allows a better way to track rights used for mitigation. Additionally, forfeiture cannot occur for the portion relisted as mitigation within the right. Last but not least, the water bearing zone should include the shallowest area from which ground water is captured by the ponds (1 to 30 feet, for example).

Whatever form the mitigation plan takes, it should accompany the application to allow adequate evaluation by the department in its consideration of the application.

I hope these thoughts are helpful as your client continues its efforts regarding the Consent Order and Agreement in the pond matter. Please let me know if you need anything else in working through the application process.

Sincerely,



Steve Lester
Water Rights Supervisor

Plan is
lien of transfer
etc. -
permission to
use this new
approach