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IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA)
Case No. 39576)
_____)

PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR
Water Right 36-14863

1996 DEC 13 AM 9:23

DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO

FILED _____

NAME & ADDRESS: NELSON BORGES
535 GANNETT RD
BELLEVUE ID 83313

SOURCE: GROUNDWATER

QUANTITY: 0.11 CFS

THE QUANTITY OF WATER UNDER THIS RIGHT SHALL NOT EXCEED 13,000
GALLONS PER DAY.

PRIORITY DATE: 03/01/1960

POINT OF DIVERSION: T07S R17E S29 SWSSE Within JEROME County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	STOCKWATER	01-01 12-31	0.07 CFS
	DOMESTIC 1 HOME	01-01 12-31	0.04 CFS

PLACE OF USE: STOCKWATER Within JEROME County
T07S R17E S29 SESE

DOMESTIC Within JEROME County
T07S R17E S29 SESE

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT IS NOT A
DETERMINATION OF HISTORICAL BENEFICIAL USE.

DATED:

DEC 13 1996

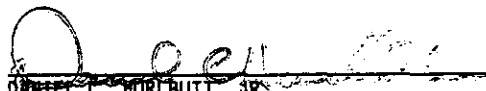

DANIEL C. HURLBUTT, JR.
PRESIDING JUDGE
Snake River Basin Adjudication

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

DATED:

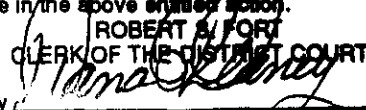
DEC 13 1996

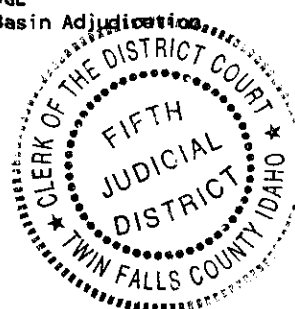

DANIEL C. HURLBUTT, JR.
PRESIDING JUDGE
Snake River Basin Adjudication

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PARTIAL DECREE PURSUANT TO I.R.C.P. 54(b)
Water Right 36-14863

State of Idaho ss.
County of Twin Falls
I hereby certify the foregoing to be a full,
true and correct copy of the original on
file in the above entitled action.

ROBERT A. FORT
CLERK OF THE DISTRICT COURT
By 
CITY CL



PAGE 1
NOV-26-1996

IDWR TRANSFER ANALYSIS SHEET

APPLICANT Burgess Davy TRANSFER NO. 69125

1. Right number(s) 36-2676 etc

2. Type of right ☒ Decree ☐ License ☐ Statutory Claim
☐ SRBA Beneficial Use Claim

3. Purpose of transfer ☒ Change P/D ☐ Add P/D ☒ Change P/U
☒ Change N/U ☐ Change Source ☒ Split Right
Other: change period of use

4. Check Existing Right: ☒ Source ☒ Priority ☐ Amount ☐ Purpose
☒ Period ☒ SRBA Claim
☒ Description of original point(s) of diversion
☒ Description of original place of use
☒ Overlapping rights on original place of use

Comments: _____

5. Check Proposed Right for amount of land &/or water transferred:

☒ Also see attached memo for more analysis information

- a. ☒ All of right
- b. ☒ Part of right (NOTE: Part B should be filled in only if part of right is owned by the applicant)
- c. ☒ Description of point(s) of diversion
- d. ☒ Description of place of use
- e. ☒ Map showing P/D & P/U after transfer
- f. ☒ Correct notarized signature and \$100 fee
- g. ☒ Proof of ownership of right &/or land from which water is transferred
- h. ☒ Expansion in use of right - Comments: None apparent

RECEIVED

MAR 15 2004

DEPARTMENT OF WATER RESOURCES

69125

i. ☒ Existing rights from same source, on land water is being transferred to; right number(s): North Side Canal Right

j. ☒ SRBA claim(s) - Comments (NOTE! Approved transfer amends SRBA claim; differences between existing water right and SRBA claim? any ownership or other outstanding issues? Explain) _____

k. ☒ Comment letters _____ Yes _____ No _____
If yes _____ Water District # _____
_____ Lienholder, others, see #2
_____ below for name and address

INITIAL ALLOCATION REVIEW BY _____ DATE _____
SRBA SUPERVISOR REVIEW BY _____ DATE _____
PUBLICATION REVIEW BY _____ DATE _____

1. Legal Notice electronically sent to DWRO3::VAULT ☒ Yes
2. COMMENT LETTERS Copy of Pg 1 to AJ ☒ Yes

Watermaster recommendation requested on _____, Received on _____

Other comments letters - send to the following name(s) & address(es):

3. Transfer published correctly? ☐ Yes ☐ No
4. Affidavit of publication received? ☐ Yes ☐ No
5. Protests received? ☐ Yes ☐ No; Acknowledgement sent? ☐ Yes
6. Copies made for Region file (see attached supplemental page)? ☐ Yes

RECOMMENDED ACTION

1. ☒ Approve
2. ☐ Deny due to _____

3. Conditions (special conditions in Water Districts) _____

Also see attached memo for recommendation dated: _____
4. By AD Date 3/3/29

FILE PROGRESS SUMMARY

✓ #69125

APPLICANT: Borgess DairyWATER RIGHT NO. 36-2676 etc

INIT.	DATE	COMMENT
amb	2/26/01	Stopped to John Freitag
JF	5/11/01	Talked to Del Koltz about getting a dairy spread sheet and some other??'s He will bring in a dairy spread. ASK
JF	5/16/01	To M.B. for advertising
NS	5/25/01	NELSON BORGESS CAME IN AND ASSIGNED APPLICATION OVER TO KEVIN PARNELL (SAWTOOTH DAIRY). SENT LETTER TO MR. PARNELL REQUESTING UPDATED OWNERSHIP INFORMATION. GAVE TO MARY FOR ADVERTISING.
NS	5/29/01	RECEIVED UPDATED PURCHASE AND SALES AGREEMENT FROM KOLTZ. AND WARRANTY DEED FROM MR. PARNELL
MB	7/5/01	ADV. Sch - SP 7/9 + 7/16; NSN 7/12 + 7/19/01; 7/30/01
NS	7/20/01	GAVE LETTER TO MR. PARNELL FOR COUNTY.
MB	8/2/01	Put off rec SP (7/8/01); NS (7/24/01)
MB	7/30/01	Prot. rec
MB	8/14/01	Notice of Prot. + Prot. ack ltr sent
MB	1/26/04	File scanned to date.
MB	2/27/04	WM Recommendation scanned
MB	3/2/00	Revised sufficient, new
MB	3/2/04	To MB to Bureau.

MEMORANDUM

Date: February 06, 2004
To: Transfer 69125
From: ameritt
Re: sufficiency memo

Evaluation of Sufficiency of Information Submitted (Transfer 69125 in the name of Sawtooth Dairy)

This transfer proposes to convert water used for irrigation and use the water for stockwater and commercial uses at an existing dairy currently partially covered under a partial domestic decree 36-14863. The transfer initially proposed to dry up 6.7 acres of land (20 afa of CU water) being a portion of a PPU of 372 acres known as the Larsen Farm. This farm is irrigated using rights 36-7044, 36-2676 and 36-7158 from ground water recently decreed in the SRBA. The transfer proposes to move the water across the ESPA approximately 29 miles down gradient toward the west to the site of the existing dairy facility where the water will be combined with the existing right. The transfer ties all rights in a common system served by one existing well and one proposed well at the dairy site. The water being transferred is assumed to be totally consumptive. After analysis of the CU on the Larsen Farm the application was augmented by a mitigation plan involving reducing the intended volume to be transferred from the Larsen property (18.0 afa) but making it up by drying up 0.9 acres (2.0 afa) on the Beckley property (near Dietrich) approximately 13 miles NE of the dairy site. These acres are a portion of the place of use of right 37-7757 recently decreed in the SRBA. The decree for 37-7757 notes that the right is combined with AFRD 2 and BWCC shares; however, further review based on submittal of the stock certificates for Beckley shares in BWCC during review of UR Farms T69120 show that the shares are associated with adjoining land but the land involved in the transfer is primarily supplied water from right 37-7757. As part of the mitigation plan an additional 3.6 acres will be dried up for a period of time then after a few years 1.5 acres will be allowed to return to production. In total 3.0 acres of this right will be permanently dried up (0.9 acres for conversion to dairy and 2.1 acres for mitigation. Additionally to provide the additional necessary mitigation requirement to prevent impact to the Thousand Springs reach of the Snake River the applicant proposes to rent from the Water Bank the dairy component of recently decreed in the SRBA rights 37-8093 and 37-10142 on the Hubsmith Farm near the Beckley Farm. This proposed rental of water is for the time period of winter 2004 through summer of 2008. During this period these Hubsmith waters will not be used anywhere.

Authority to File:

A portion of the subject land being dried up involved in transfer is owned by John and Vivian Larsen. The file contains an agreement for purchase and sale of these subject lands from John and Vivian Larsen to Del Kohtz. The file also contains an agreement between Del Kohtz for purchase of the Larsen right. The subject land on the Beckley property involved in the mitigation plan is owned by R.K. and Bonnie Beckley. The file contains an option agreement between Beckley and Del Kohtz for purchase of a portion of right 37-7757. Purchase of Land not included. The file also contains an agreement between Del Kohtz and Sawtooth Dairy for purchase of the Beckley right. The file also contains application to place the Hubsmith water in the Water Bank and an application to rent it out by Kevin Parnell.

Water Right Validity:

All rights involved in this transfer from the Larsen property have been recently decreed in the SRBA with dates of partial decrees ranging from 12/ 1996 to 1/1998. Forfeiture does not appear to be an issue. Included in earlier transfer applications for these same rights are documents evidencing the

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MEMORANDUM

recent use of the irrigation rights in years 1996 through 2000. The right involved in the transfer from the Beckley property has also been recently partially decreed. The earlier transfers filed on this same right includes an evaluation of the consumptive nature of the right with use as recent as 2002. Forfeiture does not appear to be an issue. Hubsmith rights were decreed in 2002; forfeiture does not appear to be an issue.

Enlargement of Use:

Due to the irrigation rights being changed to commercial and stockwater needs an analysis of the historical use information has been made for both the Larsen farm and the Beckley farm. Based on this analysis the consumptive use allowable to be transferred from the Larsen farm should be limited to no more than 2.69 afa per acre of dried up land (Based on analysis of cropping patterns over several years; number is average peak use for all crops on farm. Total of 50.3 afa for 18.7 acres) for conversion of nature of use. The consumptive use for the fields involved in the transfer on the Beckley property should be limited to no more than 2.84 afa per acre (Based on pasture use in 2002. Total of 12.8 afa for the 4.5 acres) to be used for mitigation for the right being moved from the Larsen property and a portion to makeup for volume needed at the dairy as originally requested.

Injury to Other Water Rights:

As stated earlier included with the application is a proposed mitigation plan prepared by Brockway Engineering. The plan is based on modeling of the ESPA. The plan involves a constant new use at the dairy of an additional 20 afa. Additionally the plan includes an immediate none use of a portion of the Beckley right (4.5 acres) with a stepped increase of allowable use over several years up to an allowable 1.5 acres with a permanent none use of 3.0 acres. (3.0 acres includes 0.9 acres dried up for moving to the dairy and 2.1 acres remaining at the Beckley property used for mitigation) The plan acknowledges the historical use of the Larsen rights and historical use on the Beckley property.

Local Public Interest:

No major issue identified. Transfer is based on total consumption of water however it is likely a small portion of water diverted will be returned to aquifer. Jerome County has a pending CAFO permitting process involving this dairy and dependent on the outcome of this transfer process. The CAFO is being increased from 500 to 800 AUMs.

Beneficial Use/Conservation of Water Resources:

No Issue Identified.

The application has been advertised and protested by Clear Springs. Negotiations continue regarding withdrawal of the protest.

Other issues:

Proposed use is within WD 130 and the watermaster needs to provide comments based on the present submittal. Although the transfer filed seeks a new well has already been drilled since the old domestic well was having problems. The new well was drilled as domestic so the drilling permit needs to be upgraded to commercial use with appropriate fees being paid.

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IDAHO DEPARTMENT OF WATER RESOURCES

Water Right Report 37-8093

WATER RIGHT NUMBER: 37-8093

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	IRIS B HUBSMITH 647 E 130 S DIETRICH, ID 83342 (208)544-7581
Current Owner	LOUIS L HUBSMITH 647 E 130 S DIETRICH, ID 83324 (208)544-7581
Directors Report Owner	SUE MC COWAN PO BOX 51 SHOSHONE, ID 83352 (208)886-7541

Priority Date: 03/17/1984

Basis: Decreed

Status: Active

<u>Source</u>	<u>Tributary</u>
GROUND WATER	

<u>Beneficial Use</u>	<u>From</u> <u>To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
COMMERCIAL	01/01 to 12/31	0.080 CFS	1.10 AF
STOCKWATER	01/01 to 12/31	0.080 CFS	9.30 AF
	<u>Total Diversion:</u>	0.080 CFS	10.40 AF

Location of Point(s) of Diversion

GROUND WATER	NE1/4SE1/4SE1/4	Sec. 10, Twp 06S, Rge 18E, B.M.
LINCOLN County		
GROUND WATER	NE1/4SE1/4SE1/4	Sec. 10, Twp 06S, Rge 18E, B.M.
LINCOLN County		

Place of Use

COMMERCIAL

Twp	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
06S	18E	11																	

STOCKWATER

Twp	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	

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IDAHO DEPARTMENT OF WATER RESOURCES

Water Right Report 37-8093

06S 18e 10						X	
06S 18e 11				X			

Conditions of Approval:

1. C18 THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE ENTRY OF A FINAL UNIFIED DECREE. SECTION 42-1412(6), IDAHO CODE.

Remarks:

Comments:

1. SCLELLAN 2/17/1999 REFORMAT & REVIEW
Comment: LICENSED FOR COMMERCIAL DAIRY USES.
2. CTIMM 9/24/1999 OWNER CHANGE
Comment: 9-24-99, CHANGED OWNERSHIP: MC COWAN TO HUBSMITH AS PER FORM 1409 AND US MARSHALLS DEED RECD 7-22-99. C.T.
3. CFRITSCH 9/26/2001 Priority Date
Comment: Claim a priority date 6 days after the licensed priority date.

SubCase:

SubCase Number: 37-8093
Class: 1
SF5 Filed Date:
Special Master Recom Signed Date:
Attorney Assigned:
Adjudication Agent: Steve Clelland
Basis of Claim:
Date Filed: 10/11/2002 Objection Status: Active

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IDAHO DEPARTMENT OF WATER RESOURCES

Water Right Report 37-10142

WATER RIGHT NUMBER: 37-10142

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	LOUIS L HUBSMITH 647 E 130 S DIETRICH, ID 83324 (208)544-7581
Current Owner	IRIS B HUBSMITH 647 E 130 S DIETRICH, ID 83342 (208)544-7581
Original Owner	RUBY MC COWAN PO BOX 402 DIETRICH, ID 83324 (208)544-2501
Original Owner	HERBERT J MC COWAN 882 N MAIN AVE DIETRICH, ID 83324 (208)544-2501

Priority Date: 05/01/1951

Basis: Decreed

Status: Active

<u>Source</u>	<u>Tributary</u>
GROUND WATER	

<u>Beneficial Use</u>	<u>From To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
DOMESTIC	01/01 to 12/31	0.040 CFS	1.20 AF
STOCKWATER	01/01 to 12/31	0.080 CFS	9.30 AF
COMMERCIAL	01/01 to 12/31	0.080 CFS	1.10 AF
	<u>Total Diversion:</u>	0.080 CFS	11.60 AF

Location of Point(s) of Diversion

GROUND WATER	NE1/4SE1/4SE1/4	Sec. 10, Twp 06S, Rge 18E, B.M.
LINCOLN County		
GROUND WATER	NE1/4SE1/4SE1/4	Sec. 10, Twp 06S, Rge 18E, B.M.
LINCOLN County		

Place of Use

DOMESTIC

Twp	Rge	Sec	NE				NW				SW				SE				
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	Totals
06S	18E	10																X	

STOCKWATER

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