AFFIDAVIT of PUBLICATION

State of Idaho
County of Gooding } ss.

RECEIVED
MAR 2 3 1999
Department of Water Resources
Southern Region

Patty Nance, being first duly sworn, deposes and says that she is the printer (publisher) of the Gooding County Leader, a newspaper published every week in Gooding, County of Gooding, State of Idaho; that said newspaper has been continuously and uninterruptedly published for a period of seventy-eight consecutive weeks prior to the first publication of the annexed notice, and is a newspaper qualified to publish legal notices as provided by act of the 1919 session of the legislature of the State of Idaho, known as House Bill 145; that the annexed advertisement was published once each week for 2 consecutive issues in said newspaper proper and not in supplement; that the date of the first publication of said advertisement was on the 11th day of March, 1999 and that date of the last publication was on the 18th day of March, 1999.

Patty Nance

On this 18th day of March in the year of 1999, before me, a Notary Public, personally appeared Patty Nance, known or identified to me to be the person whose name subscribed to the within instrument, and being by me first duly sworn, declared that the statements therein are true, and acknowledge to me that she executed the same.

Donna DeVoe
Notary Public for Idaho
Residing at Jerome, Idaho
My commission expires: 3/6/01

#24607/7032
GOODING COUNTY LEADER
Gooding, Idaho

OK mb 3/29/99

COST OF PUBLICATION

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

_____	Lines tabular at	_____	7¢/Pica
1,008.56	Lines straight at	60.51	6¢/Pica
1,008.56	Subsequent lines at	50.43	5¢/Pica
	Affidavit Fee	2.25	
	TOTAL COST	113.19	

MICROFILMED
JUL 2 6 20

4 apps. for transfer
TITLE OF NOTICE

PLAINTIFF ATTORNEY

DEFENDANT

PLAINTIFF
IDWR
BILL TO

COPY OF NOTICE

PU
(Ida
7-8 7¢/Pica
7-8 6¢/Pica
7-8
in 5¢/Pica

NOTICE OF PROPOSED CHANGES TO A WATER RIGHT

Notice is hereby given that that four (4) Applications for Transfer have been filed with the Department of Water Resources for changes to a water right. PRESENTLY, Water Right No. X36-07337C (3.18 cfs) with a priority date of 11/25/1977 is diverted from groundwater within NE1/4SW1/4 & NW1/4SE1/4, S05 for irrigation of 159 acres within parts of S05, all T08S, R14E; Gooding County.

Transfer No. 5401 filed in the name of JEROME CHEESE CO., PO BOX 485; JEROME ID 83338 proposes to split off a portion of the water right for year round commercial use (0.66 cfs) by drying up 33 irrigated acres. Water will be diverted from two (2) new wells and used within NW1/4NE1/4, S25, T08S, R16E; Jerome County using designated Right No. 36-07337F.

Transfer No. 5402 filed in the name of THE STANDING 16 RANCH INC., C/O STEVE ERQUIAGA, 252 W 300 N; JEROME ID 83338 proposes to split off a portion of the water right for year round stockwater use (0.30 cfs) and commercial use (0.30 cfs) by drying up 15 irrigated acres. Water will be diverted from one (1) existing well within SW1/4SE1/4 and two (2) existing wells within SE1/4SW1/4 for commercial use within SW1/4 and parts of SE1/4;stockwater use within SE1/4SW1/4 & SW1/4SE1/4, all S34, T07S, R16E; Jerome County using designated Right No. 36-07337H.

Transfer No. 5403 filed in the name of JIM D. SCARROW, 3184 S 1900 E; WENDELL ID 83355 proposes to split off a portion of the water right for year round stockwater use (1.30 cfs) and commercial use (1.30 cfs) by drying up 65 irrigated acres. Water will be diverted from three (3) wells within NE1/4NW1/4 for commercial use within NW1/4; stockwater use within N1/2NW1/4, all S14, T08S, R15E; Gooding County using designated Right No. 36-07337K.

Transfer No. 5405 also filed in the name of JIM D. SCARROW proposes to split off a portion of the water right for year round stockwater use (0.20 cfs) by drying up 10 irrigated acres. Water will be diverted from four (4) wells within NW1/4NW1/4 for stockwater use within N1/2NW1/4, all S11, T05S, R17E; Lincoln County using designated Right No. 36-07337M. Any protest against the proposed changes must be filed with the Department of Water Resources, Southern Region, 1341 Fillmore St., Suite 200; Twin Falls, ID 83301 together with a protest fee of $25.00 on or before March 29, 1999 to be considered by the Department in its decision to grant or deny any part of the proposed change. (Each transfer requires a separate protest). The protestant must also send a copy of the protest to the applicant.

Karl J. Dreher, Director

AFFIDAVIT of PUBLICATION

RECEIVED

MAR 2 3 1999

Department of Water Resources
Southern Region

State of Idaho
County of Jerome } ss.

Patty Nance, being first duly sworn, deposes and says that he/she is the printer (publisher) of the Jerome North Side News, a newspaper published every week in Jerome, County of Jerome, State of Idaho; that said newspaper has been continuously and uninterruptedly published for a period of seventy-eight consecutive weeks prior to the first publication of the annexed notice, and is a newspaper qualified to publish legal notices as provided by act of the 1919 session of the legislature of the State of Idaho, known as House Bill 145; that the annexed advertisement was published once each week for 2 consecutive issues in said newspaper proper and not in a supplement; that the date of the first publication of said advertisement was on the 11th day of March, 1999, and the date of the last publication was on the 18th day of March, 1999.

Patty Nance

On this 18th day of March, in the year of 1999, before me, a Notary Public, personally appeared Patty Nance, known or identified to me to be the person whose name subscribed to the within instrument, and being by me first duly sworn, declared that the statements therein are true, and acknowledged to me that he/she executed the same.

Notary Public for Idaho

Residing at Jerome, Id

My commission expires: 3/6/01

#24606/7914

NORTH SIDE NEWS
Jerome, Idaho

OK
MB
3/29/99

COST OF PUBLICATION

Number of Picas per Line _____

Number of Lines in Notice _____

Number of Insertions 2x

_____ Lines tabular at _____ 7¢/Pica

773.44 Lines straight at 46.41 6¢/Pica

773.44 Subsequent lines at 38.67 5¢/Pica

Affidavit Fee: 2.25

MICROFILMED
JUL 26 2000

TOTAL COST 87.33

COPY OF NOTICE

(Paste Here)

4 apps. for transfer
TITLE OF NOTICE

PLAINTIFF ATTORNEY

DEFENDANT

PLAINTIFF
IDWR

BILL TO

NOTICE OF PROPOSED CHANGES TO A WATER RIGHT

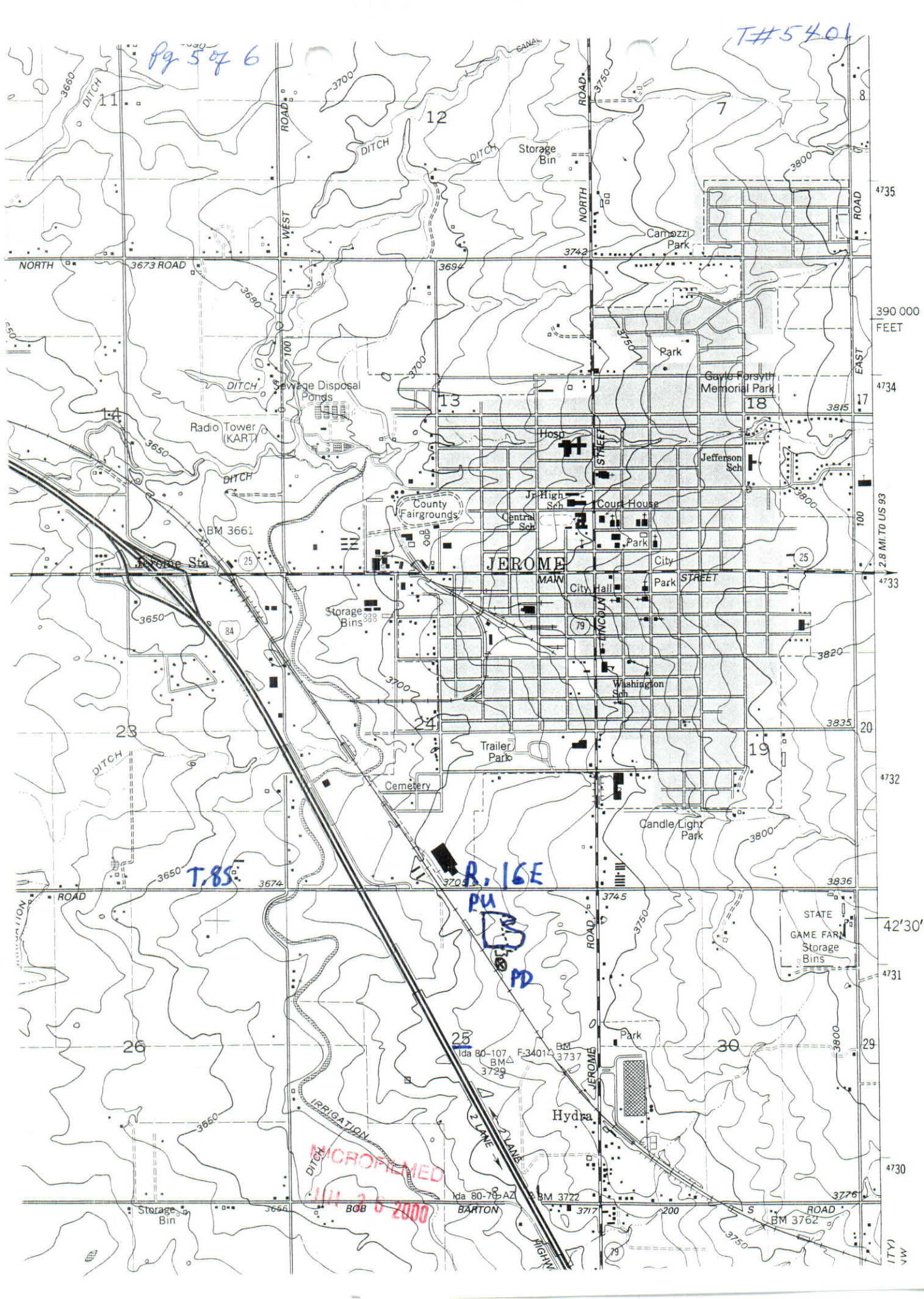
Notice is hereby given that that four (4) Applications for Transfer have been filed with the Department of Water Resources for changes to a water right. PRESENTLY, Water Right No. X36-07337C (3.18 cfs) with a priority date of 11/25/1977 is diverted from groundwater within NE1/4SW1/4 & NW1/4SE1/4, S05 for irrigation of 159 acres within parts of S05, all T08S, R14E; Gooding County.

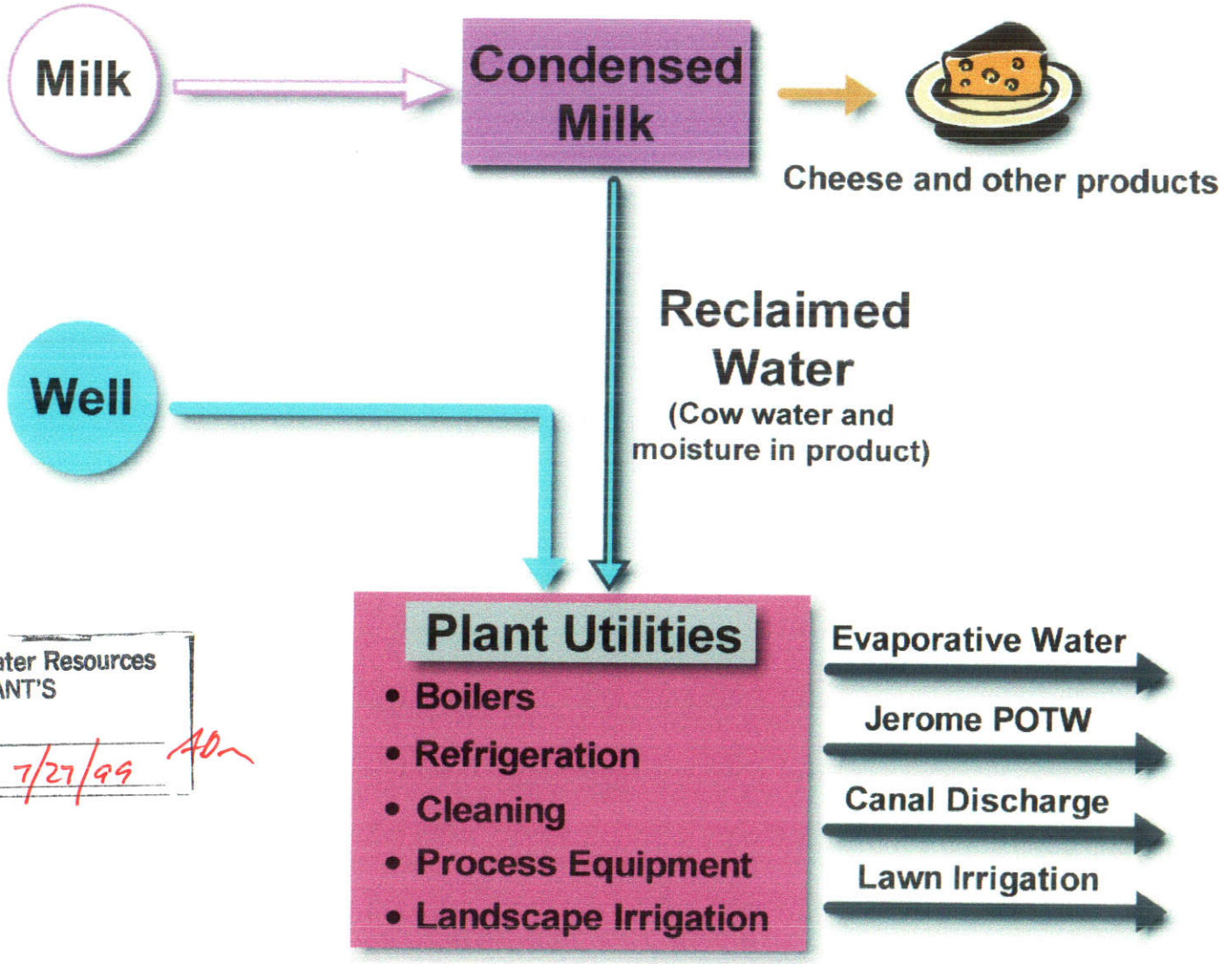
Transfer No. 5401 filed in the name of JEROME CHEESE CO., PO BOX 485; JEROME ID 83338 proposes to split off a portion of the water right for year round commercial use (0.66 cfs) by drying up 33 irrigated acres. Water will be diverted from two (2) new wells and used within NW1/4NE1/4, S25, T08S, R16E; Jerome County using designated Right No. 36-07337F.

Transfer No. 5402 filed in the name of THE STANDING 16 RANCH INC., C/O STEVE ERQUIAGA, 252 W 300 N; JEROME ID 83338 proposes to split off a portion of the water right for year round stockwater use (0.30 cfs) and commercial use (0.30 cfs) by drying up 15 irrigated acres. Water will be diverted from one (1) existing well within SW1/4SE1/4 and two (2) existing wells within SE1/4SW1/4 for commercial use within SW1/4 and parts of SE1/4;stockwater use within SE1/4SW1/4 & SW1/4SE1/4, all S34, T07S, R16E; Jerome County using designated Right No. 36-07337H.

Companion transfer Nos. 5403 and 5405 filed by JIM D. SCARROW, 3184 S 1900 E; WENDELL ID 83355 propose to split off portions of the water right for stockwater and/or commercial uses by drying up irrigated acres. Any protest against the proposed changes must be filed with the Department of Water Resources, Southern Region, 1341 Fillmore St., Suite 200; Twin Falls, ID 83301 together with a protest fee of $25.00 on or before March 29, 1999 to be considered by the Department in its decision to grant or deny any part of the proposed change. (Each transfer requires a separate protest). The protestant must also send a copy of the protest to the applicant.
Karl J. Dreher, Director

Published in North Side News on 3/11 & 3/18/99.


Pg 576
T#5401
JEROME
Hydra
Storage Bin
Cemetery
Trailer Park
Radio Tower (KART)
Sewage Disposal Ponds
County Fairgrounds
Jr High Sch
Court House
Central Sch
Jefferson Sch
Hosp
Camozzi Park
Gayle Forsyth Memorial Park
City Park
City Hall
Washington Sch
Candle Light Park
STATE GAME FARM Storage Bins
BM 3661
BM 3737
BM 3722
BM 3762
Ida 80-107
F-3401
Ida 80-76
3673 ROAD
NORTH
WEST
EAST
MAIN STREET
LINCOLN
JEROME
2 LANE
IRRIGATION DITCH
BARTON
BOB
390 000 FEET
42'30"
2.8 MI. TO US 93
T.8S
R.16E
PU
PD
MICROFILMED
JUL 2 6 2000



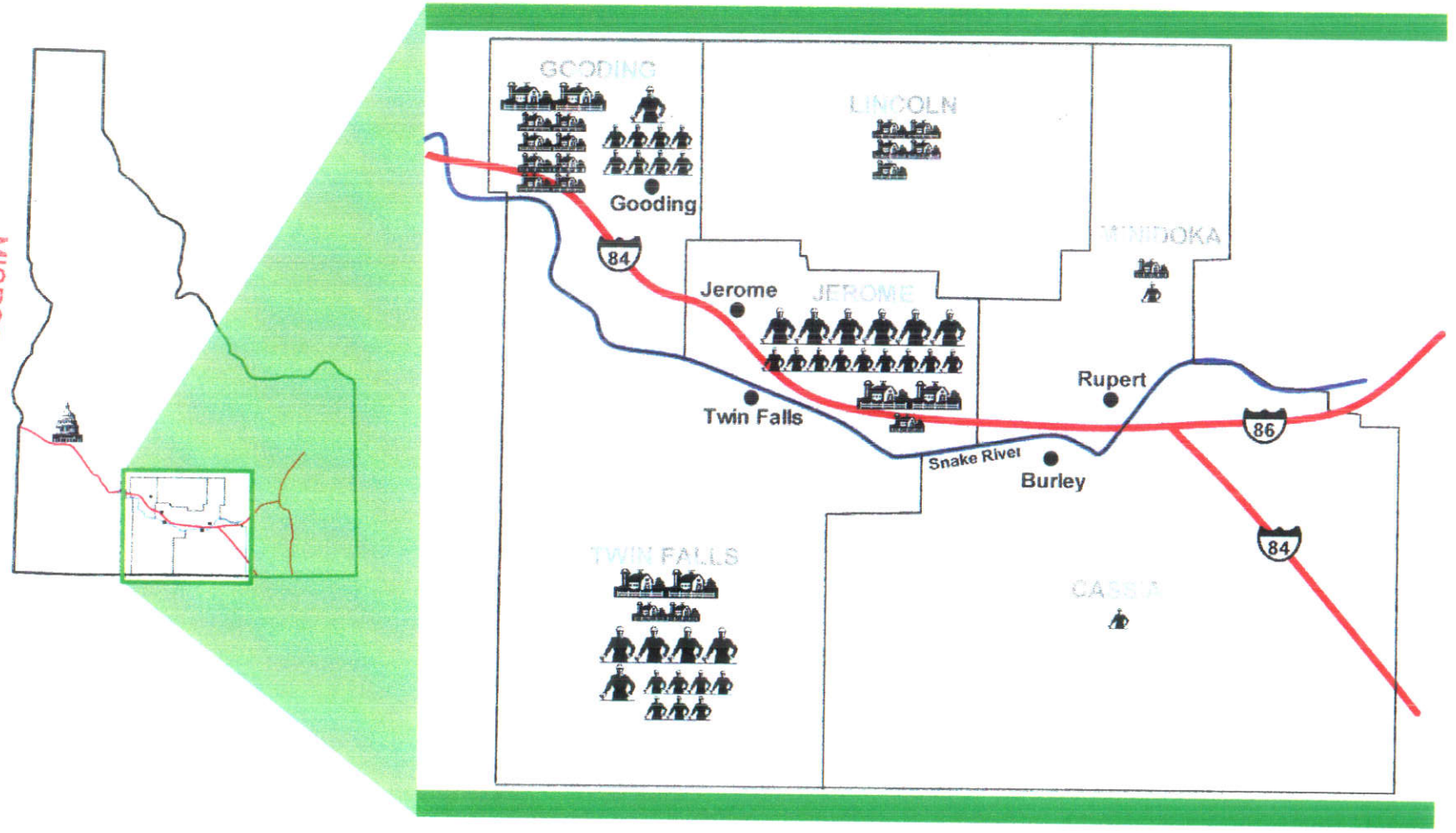
MICROFILMED
JUL 26 2000

Department of Water Resources
APPLICANT'S
Exhibit 1
Date Admitted 7/27/99

Dairy = $300 Million

150 Empl.
$4 Million

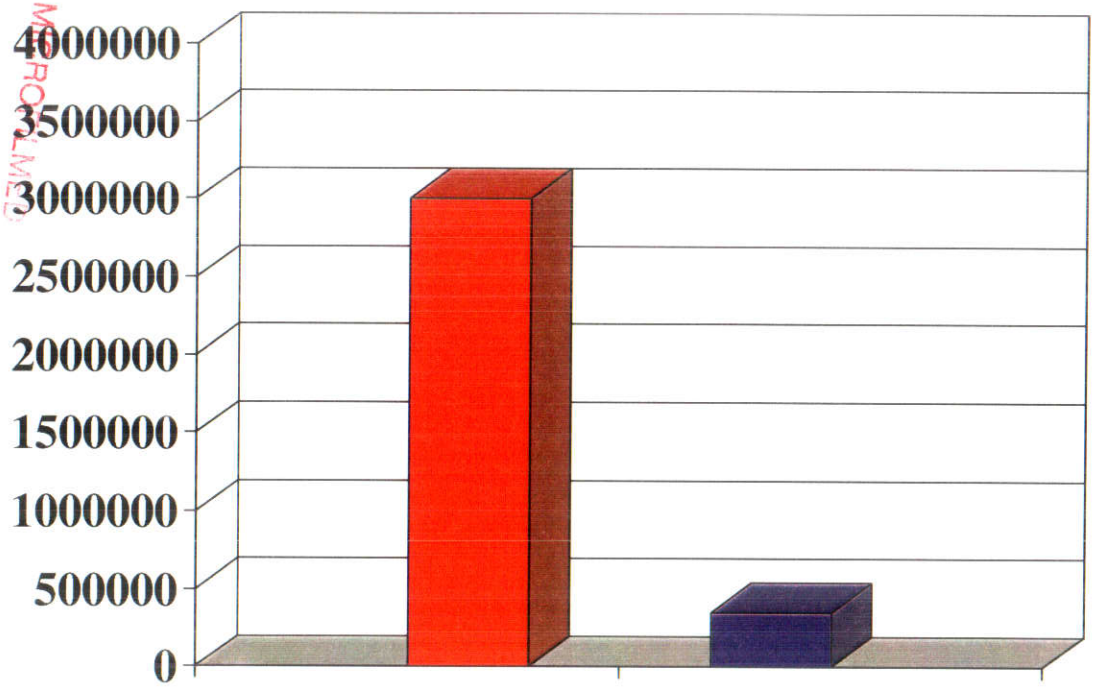
Jerome Cheese Economic Factors in Magic Valley

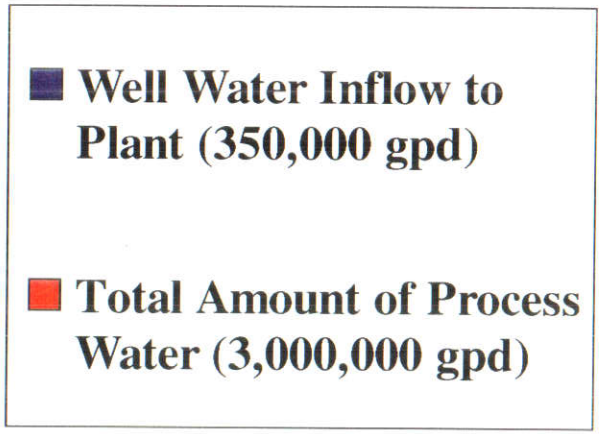


MICROFILMED
JUL 2 6 2000

Department of Water Resources
APPLICANT'S
Exhibit 2
Date Admitted 7/27/99

JEROME CHEESE COMPANY
WATER CONSERVATION MEASURES





JUL 26 2000
MICROFILMED

Department of Water Resources
APPLICANT'S
Exhibit 3
Date Admitted 7/27/99

Snake Plain Aquifer

Snake River

Hagerman

Wendell

SANDY

JEROME CHEESE

Twin Falls

Kimberly

Milner

Burley

Minidoka

Nr Blackfoot

HINCKS

American Falls

Neeley

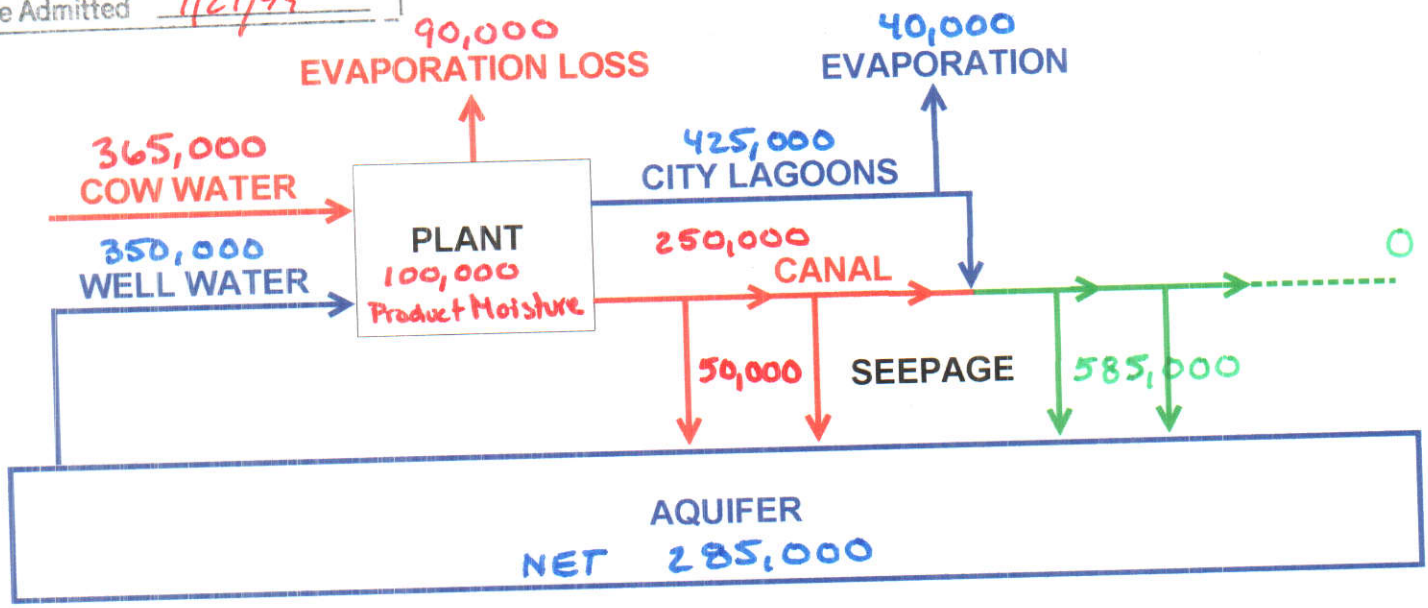
3100
3200
3250
3300
3500
3800
3900
4000
4100
4200
4400

Department of Water Resources
APPLICANT'S
Exhibit 4
Date Admitted 7/27/99

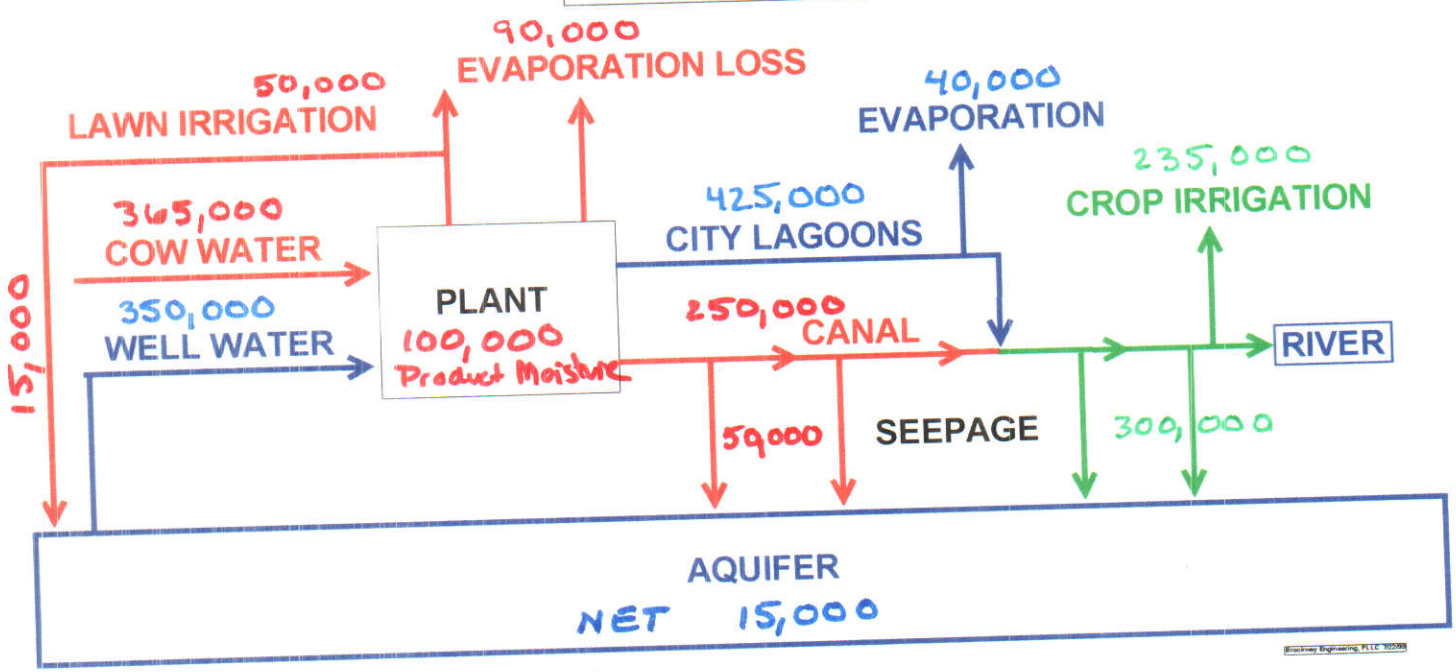
JEROME CHEESE CO.
WATER USE SCHEMATIC

Department of Water Resources
APPLICANT'S
Exhibit 6
Date Admitted 7/27/94

WINTER



SUMMER



MICROFILMED
JUL 26 2000

Well Interference Analysis Proposed Jerome Cheese Well(s) Q=3.2 cfs (Hincks Transfer)

Estimated Well Drawdown

C.E. BROCKWAY July 15, 1999 Brockway Engineering P.L.L.C. THEISwellintceb

AQUIFER PROPERTIES BASED ON USBR GROUNDWATER MANUAL-FRACTURED IGNEOUS ROCK

EST. HOLE DIA. 12 INCHES

USING THEIS FORMULA S=114.6*Q/T*W(U)

S= DRAWDOWN IN FT

Q= PUMPING RATE GPM

T= COEFFICIENT OF TRANSMISSIBILITY GPD/FT

W(U)= WELL FUNCTION OF 'U'

W(U)=-.5772-LOGeU +U-U^2/(2*2!)+U^3/(3*3!)-U^4/(4*4!) .....

U=1.87*r^2*S/(T*t)

r=DISTANCE IN FT. FROM CENTER OF PUMPED WELL TO DRAWDOWN POINT

S=COEFFICIENT OF STORAGE

T=COEFFICIENT OF TRANSMISSIBILITY, GPD/FT

t= TIME SINCE PUMPING STARTED, DAYS

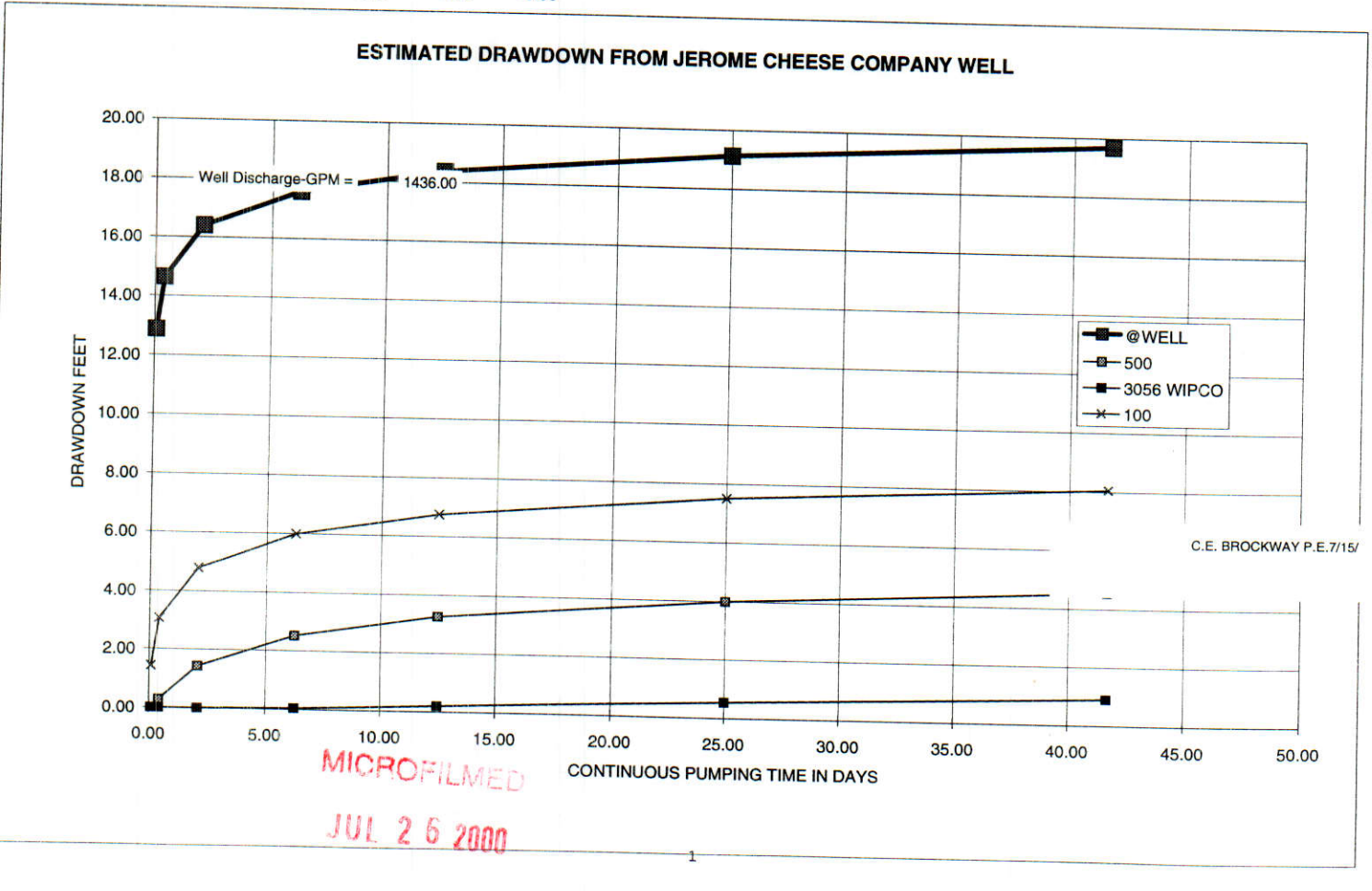
Department of Water Resources
APPLICANT'S
Exhibit 10
Date Admitted 7/27/99

INPUT

r1=	0.500 FT	K=	67.05	FT/DAY
r2=	100 FT	K=	0.00077604	CFS/FT^2
r3=	500 FT	K=	5.00E+02	GPD/FT^2
r4=	3056 FT	WRIGHT SAT. DEPTH EST.=	300	FT
r5=	3056 FT	TRANSMISSIVITY=	150058	GPD/FT
S=	0.12	TRANSMISSIVITY=	2.32E-01	FT^2/SEC
T=	150058 GPD/FT	TRANSMISSIVITY=	20061.2	FT^2/DAY
Q/WELL	1436.00 GPM =	3.200 CFS		

TIME HOURS	TIME t DAYS	U w/r1 0.5	WELL FUNCT. W(U)1	DRAW DOWN @WELL	SPEC. CAP GPM/FT	U W/r2 100	WELL FUNCT. W(U)2	DRAW DOWN @ 100	U W/r3 500	WELL FUNCT. W(U)3	DRAW DOWN @ 500	U W/r4 3056	WELL FUNCT. W(U)4	DRAW DOWN @ 3056 WIPCO
2	0.08	4.486E-06	11.7373	12.87	112	1.795E-01	1.3124	1.44	4.486E+00	0.0000	0.00	1.676E+02	0.0000	0.00
10	0.42	8.973E-07	13.3467	14.64	98	3.589E-02	2.7857	3.05	8.973E-01	0.2614	0.29	3.352E+01	0.0000	0.00
50	2.08	1.795E-07	14.9562	16.40	88	7.178E-03	4.3667	4.79	1.795E-01	1.3124	1.44	6.704E+00	0.0000	0.00
150	6.25	5.982E-08	16.0548	17.61	82	2.393E-03	5.4605	5.99	5.982E-02	2.2982	2.52	2.235E+00	0.0355	0.04
300	12.50	2.991E-08	16.7479	18.37	78	1.196E-03	6.1525	6.75	2.991E-02	2.9621	3.25	1.117E+00	0.1809	0.20
600	25.00	1.495E-08	17.4411	19.13	75	5.982E-04	6.8450	7.51	1.495E-02	3.6405	3.99	5.586E-01	0.4944	0.54
1000	41.67	8.973E-09	17.9519	19.69	73	3.589E-04	7.3556	8.07	8.973E-03	4.1453	4.55	3.352E-01	0.8249	0.90

HOURS	DAYS	@WELL	100	500	3056 WIPC	DISTANCE FEET
0	0.00	0	0	0	0	
2	0.08	-12.87	-1.44	0.00	0.00	
10	0.42	-14.64	-3.05	-0.29	0.00	
50	2.08	-16.40	-4.79	-1.44	0.00	
150	6.25	-17.61	-5.99	-2.52	-0.04	
300	12.50	-18.37	-6.75	-3.25	-0.20	
600	25.00	-19.13	-7.51	-3.99	-0.54	
1000	41.67	-19.69	-8.07	-4.55	-0.90	



MICROFILMED
JUL 26 2000

Well Interference Analysis Proposed Jerome Cheese Well(s) Q=0.66 cfs

Estimated Well Drawdown

C.E. BROCKWAY July 15, 1999 Brockway Engineering P.L.L.C. THEISwellintceb

AQUIFER PROPERTIES BASED ON USBR GROUNDWATER MANUAL-FRACTURED IGNEOUS ROCK

EST. HOLE DIA. 12 INCHES

USING THEIS FORMULA S=114.6*Q/T*W(U)
S= DRAWDOWN IN FT
Q= PUMPING RATE GPM
T= COEFFICIENT OF TRANSMISSIBILITY GPD/FT
W(U)= WELL FUNCTION OF 'U'

W(U)=-.5772-LOGeU +U-U^2/(2*2!)+U^3/(3*3!)-U^4/(4*4!) .....
U=1.87*r^2*S/(T*t)
r=DISTANCE IN FT. FROM CENTER OF PUMPED WELL TO DRAWDOWN POINT
S=COEFFICIENT OF STORAGE
T=COEFFICIENT OF TRANSMISSIBILITY, GPD/FT
t= TIME SINCE PUMPING STARTED, DAYS

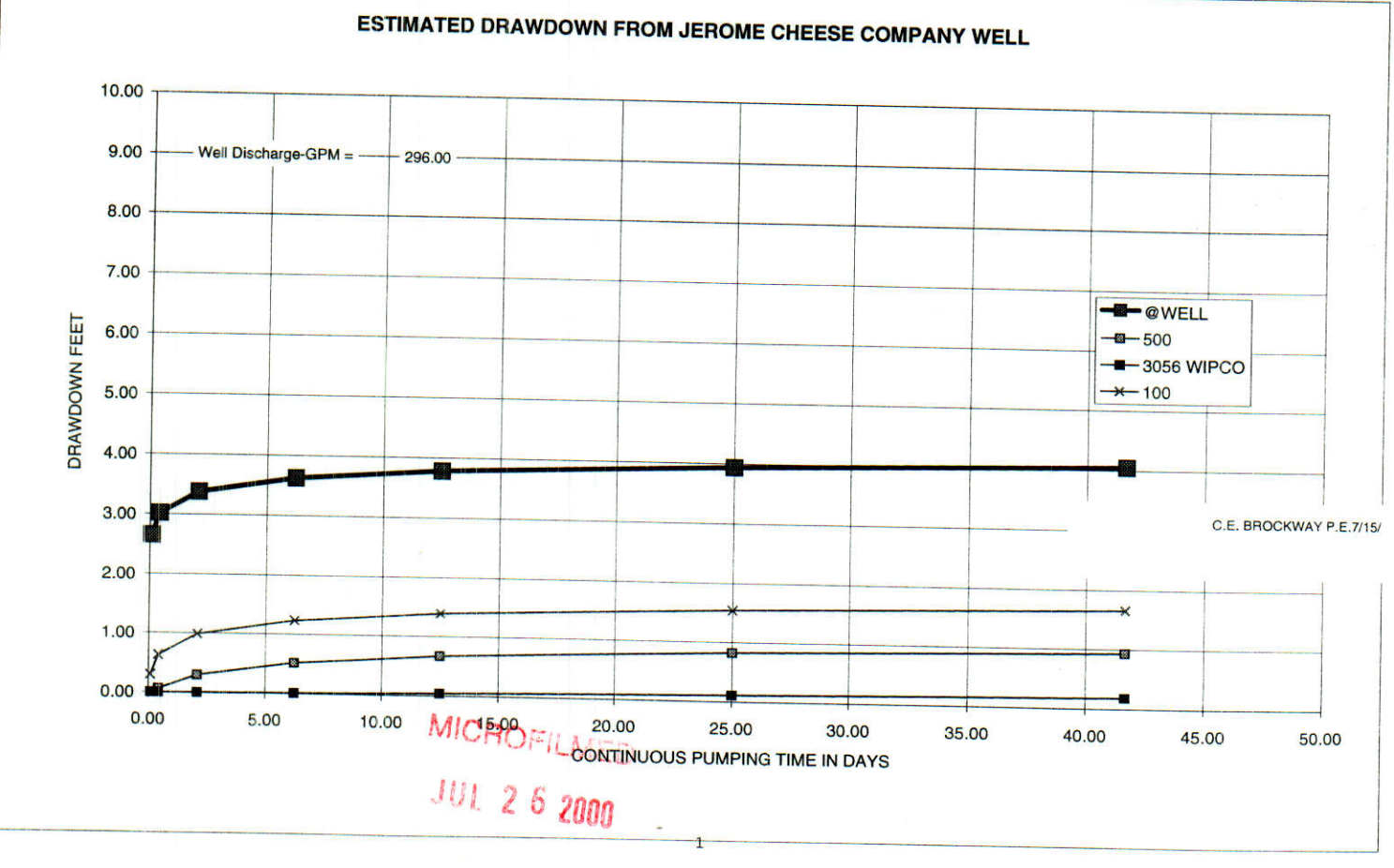
Department of Water Resources
APPLICANT'S
Exhibit 9
Date Admitted 7/27/99

INPUT

r1=	0.500 FT	K=		67.05	FT/DAY
r2=	100 FT	K=		0.00077604	CFS/FT^2
r3=	500 FT	K=		5.00E+02	GPD/FT^2
r4=	3056 FT	WRIGHT SAT. DEPTH EST.=		300	FT
r5=	3056 FT	TRANSMISSIVITY=		150058	GPD/FT
S=	0.12	TRANSMISSIVITY=		2.32E-01	FT^2/SEC
T=	150058 GPD/FT	TRANSMISSIVITY=		20061.2	FT^2/DAY
Q/WELL	296.00 GPM =	0.660 CFS			

TIME HOURS	TIME t DAYS	U w/r1 0.5	WELL FUNCT. W(U)1	DRAW DOWN @WELL	SPEC. CAP GPM/FT	U W/r2 100	WELL FUNCT. W(U)2	DRAW DOWN @ 100	U W/r3 500	WELL FUNCT. W(U)3	DRAW DOWN @ 500	U W/r4 3056	WELL FUNCT. W(U)4	DRAW DOWN @ 3056 WIPCO
2	0.08	4.486E-06	11.7373	2.65	112	1.795E-01	1.3124	0.30	4.486E+00	0.0000	0.00	1.676E+02	0.0000	0.00
10	0.42	8.973E-07	13.3467	3.02	98	3.589E-02	2.7857	0.63	8.973E-01	0.2614	0.06	3.352E+01	0.0000	0.00
50	2.08	1.795E-07	14.9562	3.38	88	7.178E-03	4.3667	0.99	1.795E-01	1.3124	0.30	6.704E+00	0.0000	0.00
150	6.25	5.982E-08	16.0548	3.63	82	2.393E-03	5.4605	1.23	5.982E-02	2.2982	0.52	2.235E+00	0.0355	0.01
300	12.50	2.991E-08	16.7479	3.79	78	1.196E-03	6.1525	1.39	2.991E-02	2.9621	0.67	1.117E+00	0.1809	0.04
600	25.00	1.495E-08	17.4411	3.94	75	5.982E-04	6.8450	1.55	1.495E-02	3.6405	0.82	5.586E-01	0.4944	0.11
1000	41.67	8.973E-09	17.9519	4.06	73	3.589E-04	7.3556	1.66	8.973E-03	4.1453	0.94	3.352E-01	0.8249	0.19

HOURS	DAYS	@WELL	100	500	3056 WIPC	DISTANCE FEET
0	0.00	0	0	0	0	
2	0.08	-2.65	-0.30	0.00	0.00	
10	0.42	-3.02	-0.63	-0.06	0.00	
50	2.08	-3.38	-0.99	-0.30	0.00	
150	6.25	-3.63	-1.23	-0.52	-0.01	
300	12.50	-3.79	-1.39	-0.67	-0.04	
600	25.00	-3.94	-1.55	-0.82	-0.11	
1000	41.67	-4.06	-1.66	-0.94	-0.19	



MICROFILMED
JUL 26 2000

Well Interference Analysis Proposed Jerome Cheese Well(s) Q=3.86 cfs(Sandy and Hincks Transfers)

Estimated Well Drawdown

C.E. BROCKWAY July 15, 1999 Brockway Engineering P.L.L.C. THEISwellintceb

AQUIFER PROPERTIES BASED ON USBR GROUNDWATER MANUAL-FRACTURED IGNEOUS ROCK

EST. HOLE DIA. 12 INCHES

Department of Water Resources
APPLICANT'S
Exhibit 11
Date Admitted 7/27/99
AD

USING THEIS FORMULA S=114.6*Q/T*W(U)
S= DRAWDOWN IN FT
Q= PUMPING RATE GPM
T= COEFFICIENT OF TRANSMISSIBILITY GPD/FT
W(U)= WELL FUNCTION OF 'U'

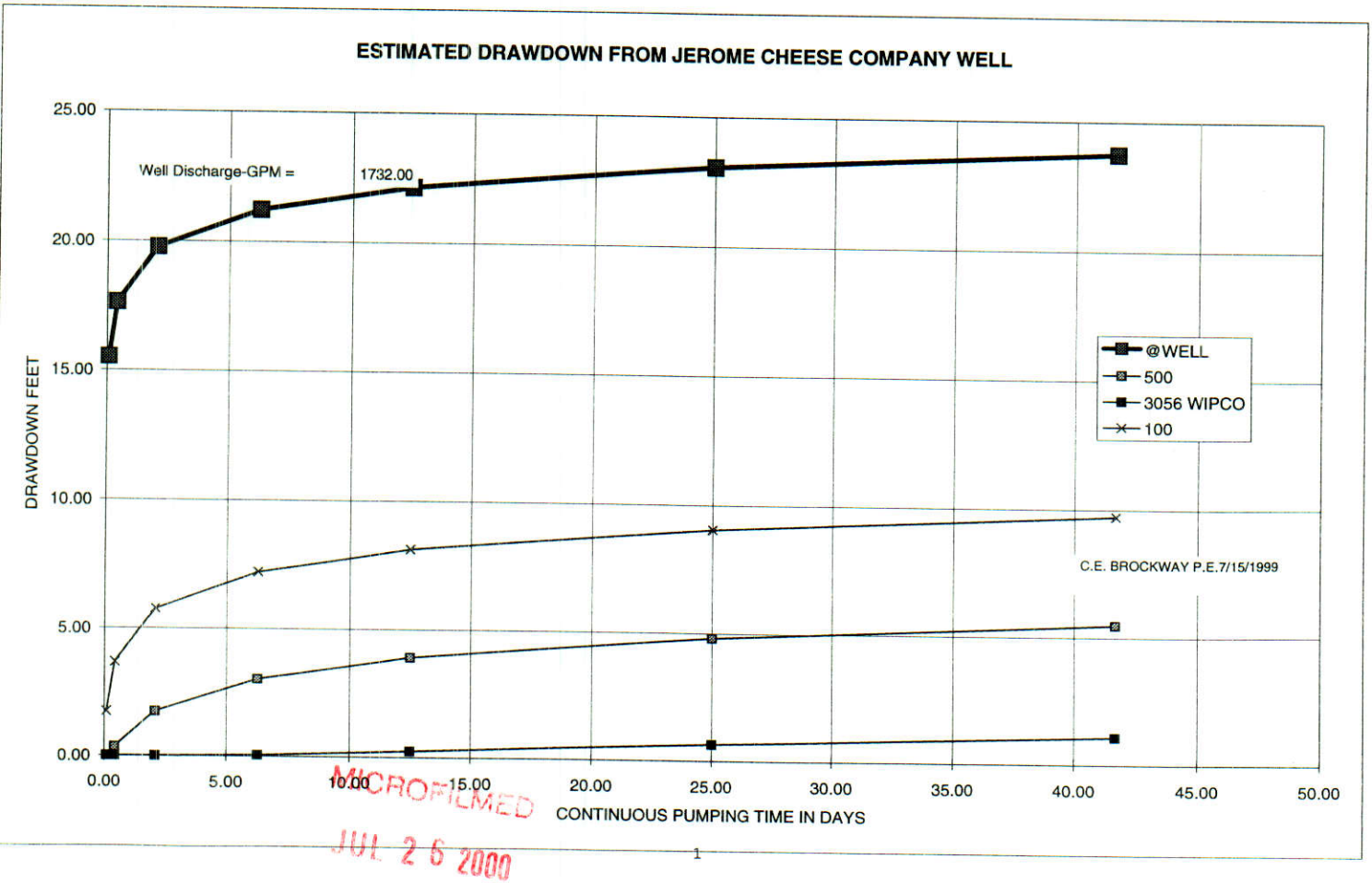
W(U)=-.5772-LOGeU +U-U^2/(2*2!)+U^3/(3*3!)-U^4/(4*4!) .....
U=1.87*r^2*S/(T*t)
r=DISTANCE IN FT. FROM CENTER OF PUMPED WELL TO DRAWDOWN POINT
S=COEFFICIENT OF STORAGE
T=COEFFICIENT OF TRANSMISSIBILITY, GPD/FT
t= TIME SINCE PUMPING STARTED, DAYS

INPUT

r1=	0.500 FT	K=	67.05	FT/DAY
r2=	100 FT	K=	0.00077604	CFS/FT^2
r3=	500 FT	K=	5.00E+02	GPD/FT^2
r4=	3056 FT	WRIGHT SAT. DEPTH EST.=	300	FT
r5=	3056 FT	TRANSMISSIVITY=	150058	GPD/FT
S=	0.12	TRANSMISSIVITY=	2.32E-01	FT^2/SEC
T=	150058 GPD/FT	TRANSMISSIVITY=	20061.2	FT^2/DAY
Q/WELL	1732.00 GPM =	3.86 CFS		

TIME HOURS	TIME t DAYS	U w/r1 0.5	WELL FUNCT. W(U)1	DRAW DOWN @WELL	SPEC. CAP GPM/FT	U W/r2 100	WELL FUNCT. W(U)2	DRAW DOWN @ 100	U W/r3 500	WELL FUNCT. W(U)3	DRAW DOWN @ 500	U W/r4 3056	WELL FUNCT. W(U)4	DRAW DOWN @ 3056 WIPCO
2	0.08	4.486E-06	11.7373	15.53	112	1.795E-01	1.3124	1.74	4.486E+00	0.0000	0.00	1.676E+02	0.0000	0.00
10	0.42	8.973E-07	13.3467	17.65	98	3.589E-02	2.7857	3.68	8.973E-01	0.2614	0.35	3.352E+01	0.0000	0.00
50	2.08	1.795E-07	14.9562	19.78	88	7.178E-03	4.3667	5.78	1.795E-01	1.3124	1.74	6.704E+00	0.0000	0.00
150	6.25	5.982E-08	16.0548	21.24	82	2.393E-03	5.4605	7.22	5.982E-02	2.2982	3.04	2.235E+00	0.0355	0.05
300	12.50	2.991E-08	16.7479	22.15	78	1.196E-03	6.1525	8.14	2.991E-02	2.9621	3.92	1.117E+00	0.1809	0.24
600	25.00	1.495E-08	17.4411	23.07	75	5.982E-04	6.8450	9.05	1.495E-02	3.6405	4.82	5.586E-01	0.4944	0.65
1000	41.67	8.973E-09	17.9519	23.75	73	3.589E-04	7.3556	9.73	8.973E-03	4.1453	5.48	3.352E-01	0.8249	1.09

HOURS	DAYS	@WELL	100	500	3056 WIPC	DISTANCE FEET
0	0.00	0	0	0	0	
2	0.08	-15.53	-1.74	0.00	0.00	
10	0.42	-17.65	-3.68	-0.35	0.00	
50	2.08	-19.78	-5.78	-1.74	0.00	
150	6.25	-21.24	-7.22	-3.04	-0.05	
300	12.50	-22.15	-8.14	-3.92	-0.24	
600	25.00	-23.07	-9.05	-4.82	-0.65	
1000	41.67	-23.75	-9.73	-5.48	-1.09	

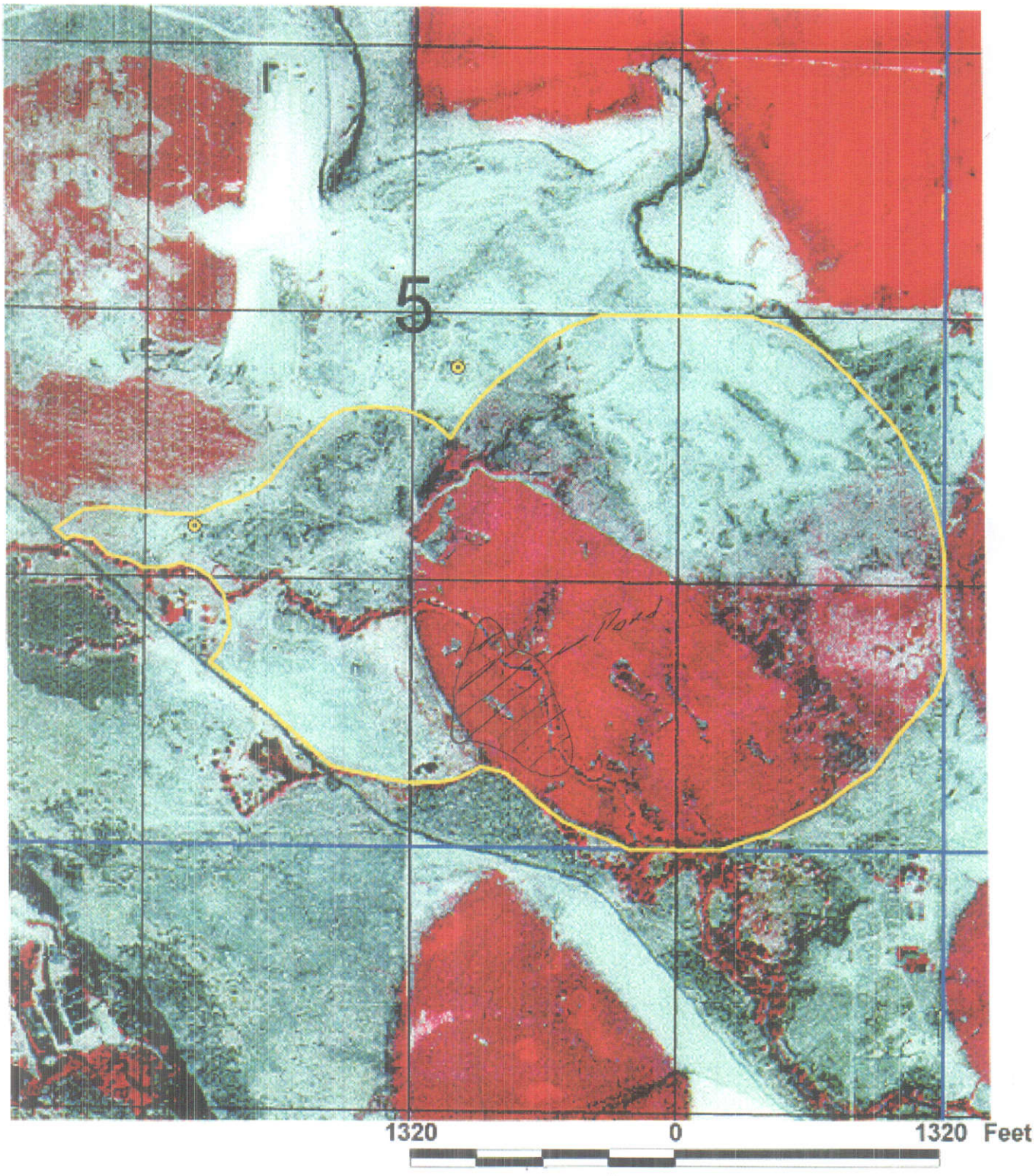


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IDAHO DEPARTMENT OF WATER RESOURCES

36-07337A

Department of Water Resources
APPLICANT'S
Exhibit 18
Date Admitted 7/27/99

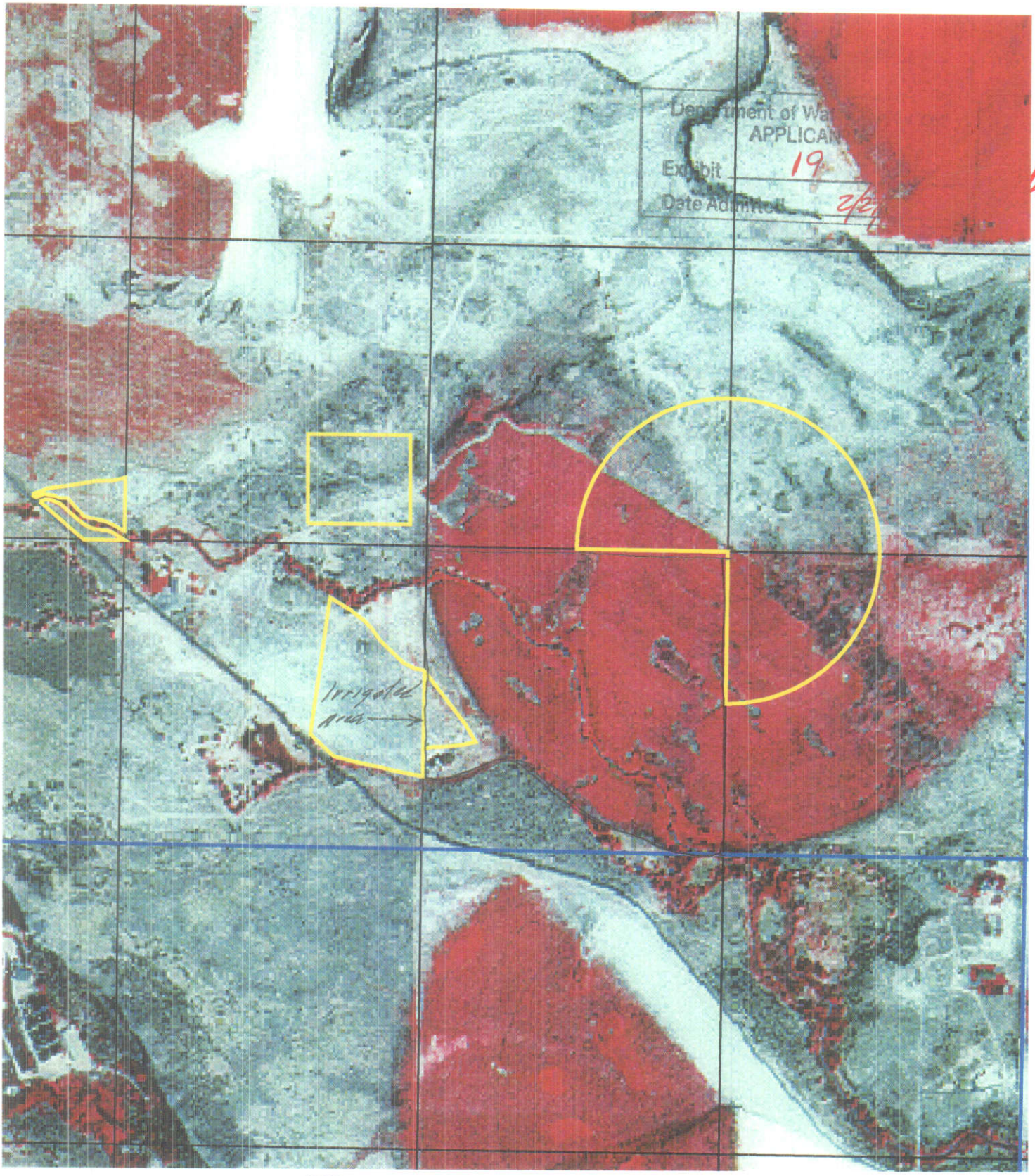


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Section Lines
Quarter/Quarter Lines
Recommended Place of Use

N
W E
S

GIS PLACE OF USE PRESENTATION
PHOTOGRAPHY: 1987 and/or 1988 NAPP
DATA ENTRY: APR, 1999
DOUGLAS JONES



Subject Property
Point(s) of Diversion
Section Lines
Quarter/Quarter Lines

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Sandy Property

Post-Transfer Configuration

Douglas Jones, 3/22/99

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Department of Water Resources

GIVENS PURSLEY LLP

LAW OFFICES
277 North 6th Street, Suite 200
PO Box 2720, Boise, Idaho 83701
TELEPHONE: 208 388-1200
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Gary G. Allen
Christopher J. Beeson
Michael C. Creamer
Thomas E. Dvorak
Roy Lewis Eiguren
Jeffrey C. Fereday
L. W. Grant III
Richard W. Jankowski
Karl T. Klein
David R. Lombardi
Kimberly D. Maloney
Kenneth R. McClure
Cynthia A. Melillo
Christopher H. Meyer
L. Edward Miller
Patrick J. Miller
Judson B. Montgomery
Angela K. Nelson
W. Hugh O'Riordan
Kenneth L. Pursley
Conley Ward
Stephanie C. Westermeier
Robert B. White
Raymond D. Givens
James A. McClure
OF COUNSEL

June 11, 1999

Mr. L. Glen Saxton
Idaho Department of Water Resources
1301 N. Orchard
Statehouse Mail
Boise, ID 83720-9000

Re: Jerome Cheese; Transfer Nos. 5401 and 5436
Our File No. 5472-1

Dear Mr. Saxton:

Enclosed is Protestant Michael Ihler's signed agreement to the proposed hearing procedures set out in our June 4, 1999, letter. We have not yet received signed agreements from Messrs. Chisholm and Halper. If they are received, they will be forwarded on to you.

Sincerely,

Michael C. Creamer

Enclosure

cc: William K. Chisholm
Lee J. Halper
Michael Ihler
Darcy Thornborrow

MCC:baf
S:\Clients\5472\1\Corr\1999-06-23 MCC Ltr to G. Saxton - re June 4 1999 Ltr Agreement.wpd

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Sincerely,

Christopher H. Meyer
For Jerome Cheese Company

CHM:baf

AGREEMENT

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

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

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

Dated: 6-23-99 Sign here: Michael W Ihler

Print name here: Michael W. Ihler

S:\Client\5472\1\Corr\1999-06-04 CHM Ltr to Protestants - Re stipulation to avoid prehearing conference.wpd

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Full Story

Jerome mayor, council disagree on water transfers
By N.S. Nokkentved
Times-News writer

JEROME -- Mayor Dennis Moore, a part-time groundskeeper at Jerome Cheese Co., has lobbied on behalf of proposed water rights transfers that the City Council has questioned.

The City Council wants to ensure the city's water supply and other water users are protected -- otherwise, it opposes the transfers.

Moore says he wants to ensure the city's continued economic stability.

The Jerome Cheese plant has applied for two water rights transfers, now under consideration by the Idaho Department of Water Resources.

In a May 28 letter to Water Resources hearing officer Glen Saxton, Moore offered his support for the transfer applications.

"As mayor of the city of Jerome and as part-time Jerome Cheese employee I can list many positive impacts that Jerome Cheese has on this community," Moore wrote.

The company has bought two-thirds of a cubic foot per second from state Sen. John Sandy, R-Hagerman, and 3.2 cfs of irrigation water from land being dried up north of Aberdeen in Bingham County -- enough water to irrigate about 120 acres.

One cubic foot per second equals 449 gallons per minute.

The transfers would allow the plant to reduce its dependence on city water, cheese plant manager Jon Davis said. Both transfers are contingent on Water Resources' approval.

"Approval of the water transfer will work well for the city of Jerome as well as for south central Idaho," Moore wrote to Saxton.

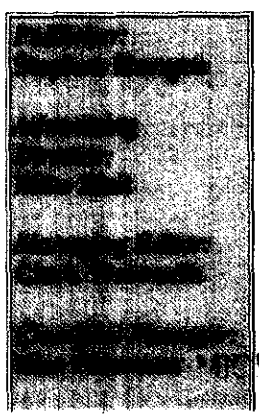
But apparently the City Council doesn't agree, and has voted to intervene in the case.

The city's petition to intervene, filed with Water Resources, notes that Jerome Cheese may use the private water source as a means to contest the city's annexation proposal, now under consideration. The petition also questions the effects of the cheese plant using a private water source while also connected to the city water supply.

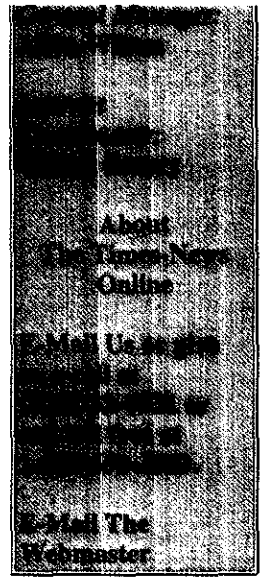
Council members Marge Schmidt and Charlie Correll said the purpose of the petition was to get some answers about the transfers and their effect on the city and other water customers. They wanted to ensure the city's water was protected and to make sure there was enough water for everybody, Schmidt said.

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City Administrator Jon Cecil deferred comment to city attorney Robert E. Williams.

City officials will meet with Jerome Cheese officials in the coming weeks to see if the city's concerns can be worked out, Williams said.

"If the city's conditions for the granting of the applications cannot be met by (Jerome Cheese), the (Jerome) will request denial of the application for transfer," the petition says.

Some council members also were uncomfortable with the apparent conflict of interest of the mayor supporting the transfer while he also works for Jerome Cheese, Schmidt said.

Moore noted that he excused himself during recent discussions and proceedings concerning Jerome Cheese.

"He should have been doing that all along," Schmidt said.

If the mayor continues to disqualify himself during discussions and proceedings concerning Jerome Cheese, there is nothing further the city would do, Williams said.

The proposed transfers also have been protested by other Magic Valley residents who seek a halt to continued growth in large dairies without a thorough inventory of water and farmland available for spreading waste.

A hearing on the protests is set for July 27 and 28.

Times-News staff writer N.S. Nokkentved can be reached at 733-0931, Ext. 237.

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JUN 2 1 1999
Department of Water Resources

William K. Chisholm
19073E Hwy 30
Buhl, Idaho 83316
543-4418
chisholm@rmci.net

BEFORE THE
IDAHO DEPARTMENT OF WATER RESOURCES

In the Matter of Application For Transfer Nos. 5401 (Water Right No.X3607337E) Jerome Cheese, Applicant William k. Chisholm Lee J. Halper Protestants	PROTESTANT WILLIAM K. CHISHOLM"S RESPONSE TO APPLICANT'S MOTION IN LIMINE AND MOTION FOR PROTECTIVE ORDER, AND PROTESTANT CHISHOLM"S MOTIONS TO DENY THOSE THOSE MOTIONS
In the Matter of Application For Transfer Nos.5436 Water Right No.35-08606) Jerome Cheese, Applicant William K. Chisholm Lee J. Halper Michael Ihler Darcy Thornborrow Protestants	

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FIRST AND FOREMOST, I am not a lawyer, I can't afford a lawyer and even if i could, I wouldn't because this matter is not a question of legal technicalities, but rather a question of responsible stewardship of our most precious natural resource our WATER.

The Applicant's Attorney insinuates that I do not have standing with regard to issues 1, 2, and 4,those issues required under Idaho Code§ 43-222 to be proven by the Applicant whether there is a protest or not. Whether I personally own water rights or not is not an issue. The Applicant has a responsibility to prove the lack of injury to anyone, and the Idaho Department of Water Resources has the responsibility to see that the Applicant does. Part of the reason for my protest was to insure that those requirements be carried out. Furthermore I have standing because I am standing up and have been for the better part of the last quarter century for the well being of the public's water in the mid-Snake reach and beyond.

As to the whole question of "public interest", I was one of those involved in the Box Canyon fight the precipitated Hardy vs Higginson, at issue there was not just the use of the water, but the effect of that use. The Applicant implies that I am trying to somehow take on the end product consumption of cheese, that is not true. The

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fact is that Jerome Cheese, the Applicant, as an industry is not separate from the dairies which supply the milk. It is one industry and the responsibility for the adverse effects of that industry as a whole on the quality of life in the Magic Valley rests in part upon the Applicant, for they are one of the driving forces behind the growth of the industrial dairies and the serious problems that go with them. I am not talking about end product consumption, I am talking about production impacts.

The Applicant argues that the Idaho Legislature never meant for the "public interest" argument to go beyond the actual use of the water. Issues 1,2 and 4 deal with the use of the water and while public interest may also deal directly with the use of the water it may also deal with the impacts and the effects of that water use. Public interest is a dynamic question, it can't be put in some box and narrowly defined. To do so would limit the People and the State of Idaho from evolving conscious water management.

This is not a case of Protestants vs. Applicant, this is a question of responsible water management. It is not in the public interest to stifle debate with regard to the issues before the Idaho Department of Water Resources. It is in the public interest to keep the debate "reasonable", perhaps the old business law test of "What would a reasonable man do?" might fit. As to relying too much on

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past precedent, that precedent may be good, or it may be bad. The real responsibility is to look and the issues in the here and now.

Thus said, I would ask the hearing officer to deny the Applicant's Motion In Limine, to not hold the hearing before the hearing, but to in fact listen to all parties to this issue at the hearing scheduled on these matters and come down on the side of responsible water management.

As to the Matter of the Applicant's Motion for Protective Order. The idea that myself or any of the other Protestants are abusing the system and somehow attacking the Applicant's constitutional rights is ludicrous. The protest is part of the process of assuring that good water management decisions are made. That we are perhaps breaking new ground in this regard does not invalidate the protests. The seriousness of the issues involved requires that discuss this issue in its totality, not broken into such small parts that nothing is of relevence and thus poor management of the resource is the outcome. The Applicant's attorney laments the Applicant's spending so much money on legal fees, yet it is the applicant's attorney that keeps rolling out all these superfluous arguments and forest consuming motions. I say let's just lay the cards on the table. Let's not play all these legal mumbo jumbo games.

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Thus said, I would ask that the Hearing Officer deny the Applicant's Motion For Protective Order.

Dated this 14th day of June, 1999

William K. Chisholm
Honorable Protestant

JUN 26 2000

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JUN 21 1999
Department of Water Resources

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on June 18, 1999 I caused to be served a true and correct copy of the foregoing to each of the persons named below by the mails of the United State.

William K. Chisholm

Christopher H. Meye, Esq.
Michael C. Creamer,Esq
GIVENS PURSLEY LLP
277 N 6th St, Suite 200
P.O. Box 2720
Boise, Idaho 83701-2720

Mr. Karl J. Dreher
Director IDWR
1301 N ORchard St.
Statehouse Mail
Boise, Idaho 83720-9000

L. Glen Saxton
Hearing Officer
Idaho Department of Water Resources
1301 North Orchard St.
Statehouse Mail
Boise, Idaho 83720-9000

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Council votes to annex, Jerome Cheese applies for well permits

JEROME - Jon Davis, representative for Jerome Cheese Co. told Jerome City Council members Tuesday night he and his father conduct business on a handshake.

"But we will never do business with the City of Jerome again without having i in writing," Davis said.

At issue was whether or not the Davis' were promised that their plant never be annexed when they agreed to become the first business to move into Jerome's newly built industrial park in the early 1990's.

Davis addressed the council during a public hearing held as part of annexation procedure for bringing the plant into the city.

The council voted unanimously to annex Jerome Cheese Co.

Council president Ralph Peters conducted the hearing when mayor Dennis Moore stated a conflict of interest and recused himself from the proceeding. Moore is an employee of Jerome Cheese Co.

During the hearing, four Jerome residents testified in favor of annexation.

Ted Gardner, who has resided in Jerome for 59 years, said while he believed the company had been told they would not be annexed for "four or five years - long enough for them to get on their feet," that anyone close enough to the city to get sewer and water should be annexed.

Another, Charlie Halleran, said he, too, believed the Davis' had been given "al kinds of promises" if they located their plant in Jerome.

"But there were no promises in writing that said such and such and such," he said.

"I am severely opposed to annexation," Davis told the council.

"We can't afford to write a check in 1999 for $280,000 - we will have to find some other way to cut expenses," he said.

That way could be in the amount of water and sewer business the company does with the city.

They are currently Jerome's biggest customer but are attempting to have water rights transferred to their property in the industrial park. One water right woul be transferred from Hagerman and another from a farm near American Falls. Both permits are currently for irrigation and would have to be changed to industrial.

According to information on the application, filed with the Department of Water Resources, the water would be used for the production of cheese, equipment washing and restrooms.

The applications, which are scheduled for hearing July 27 - 28, have been protested by individuals as well as the City of Jerome which filed a Petition fo Intervention in the matter.

But it seems as if not everyone is in agreement within the city.

A letter of support for the transfer by mayor Dennis Moore was filed on June which is seemingly in conflict with the position of the city.

Although Moore indicates the letter is his "personal support of the Jerome Cheese Company water transfer application", he identifies himself as the

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Mayor of Jerome.
The hearings on the water right transfers will begin at 9 a.m. and will be held i the Obenchain Insurance Building in Twin Falls. The hearings are open to the public.

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Filing or Recording of Documents

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

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

Amended Petition for Intervention

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

Date filed ____ By ____

- ☐ Charge our office for fees
- ☒ Check enclosed to cover fee: $250.00

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Southern Region

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JUL 26 2000

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

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

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Department of Water Resources

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

BEFORE THE IDAHO STATE DEPARTMENT OF WATER RESOURCES

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

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

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

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

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

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

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

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

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

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

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

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

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

DATED this 15th day of June, 1999.

FREDERICKSEN, WILLIAMS & MESERVY

By: _____
ROBERT E. WILLIAMS
Attorney for Petitioner

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JUL 26 2000

CERTIFICATE OF SERVICE

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

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

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

Bill Chisolm
19073 East Highway 30
Buhl, ID 83316

Lee Halper
321 South 230 West
Jerome, ID 83338

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

Darcy Thornborrow
1676 East 3800 North
Buhl, ID 83316

DATED: 6/15/99

ROBERT E. WILLIAMS

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JUL 26 2000

6/16/99

Mrs [illegible]
Please make copies for
files T5401 & T5436
and then send original
to Glen Sexton.
Thanks

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JUL 26 2000

5022279 #50
ADm 6/16/99

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JUN 16 1999
Department of Water Resources
Southern Region

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

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C:\Marie's Files\City of Jerome\IDWR\petition

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DATED this 15th day of June, 1999.

FREDERICKSEN, WILLIAMS & MESERVY

By: _____
ROBERT E. WILLIAMS
Attorney for Petitioner

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OCT 26 2000

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

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

Bill Chisolm
19073 East Highway 30
Buhl, ID 83316

Lee Halper
321 South 230 West
Jerome, ID 83338

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

Darcy Thornborrow
1676 East 3800 North
Buhl, ID 83316

DATED: 6/15/99

ROBERT E. WILLIAMS

MICROFILMED
JUL 26 2000

Filing or Recording of Documents

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

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

Amended Petition for Intervention

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

Date filed _____ By _____

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

RECEIVED
JUN 16 1999
Department of Water Resources
Southern Region

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

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

MICROFILMED
JUL 26 2000

Dreher, Karl

From: H3trifly@aol.com
Sent: Thursday, June 17, 1999 8:08 AM
To: kdreher@idwr.state.id.us
Subject: Mayor Moore of Jerome Lobbys for Jerome Cheese Water Transfer

A letter calling for the Resignation of Mayor Moore of Jerome was sent to the following officials and a transcript of the motivating letter is also attached.

City of Jerome Charles Correll 208-324-8204 City Councilperson
City of Jerome Dennis Moore 208-324-8204 Mayor
City of Jerome Ralph Peters 208-324-8204 City Councilperson
City of Jerome Marjorie Schmidt 208-324-8204 City Councilperson
City of Jerome Joe Skaug 208-324-8204 City Councilperson
City of Jerome Robert E. Williams, III 208-324-8204 City Attorney

Subject: (Jerome Cheese in that matter involving annexation to the City of Jerome) (Jerome Cheese as Applicant in those two Water Rights Transfers referred to as 5401 and 5436)

Dear <Salutation:40>:

The purpose of this letter is to request the City Council of Jerome to investigate the authenticity of the attached letter and conditioned on a determination of authenticity call for the resignation of the Honorable Mayor Moore of Jerome.

I have been personally called by a person alleging to be a Mr. Davis who stated that he had an interest in Jerome Cheese. He referred to me as the posterior end of a male donkey because I questioned the circumstances and people involved in the subject water transfers. This same person told me he was too powerful for me or anyone else to annex him or stop the subject water transfers. It is my understanding that the Honorable Mayor Moore has admitted his conflict of interest in this matter by recusal from considering the annexation of Jerome Cheese in a City Council Meeting on June 15, 1999. The reason for this recusal is his employment by Jerome Cheese.

As you will see in the attached letter the Honorable Mayor Moore has, "...As Mayor of the City of Jerome..." recommended to the Idaho State Department of Water Resources that the Jerome Cheese water transfer which I assume to be the ones mentioned in the subject line as 5401 and 5436 be approved. The Honorable Mayor Moore seems to be intimately involved on behalf of the Applicant as he is informing the hearing officer Mr. L. Glen Saxton of future testimony to be offered on behalf of Jerome Cheese. Perhap he has been coached by his employer or his employers counsel. It is certainly apparent that the representations of the Honorable Mayor Moore as both an employee of Jerome Cheese and as Mayor of Jerome seem to be an overt act of misfeasance and perhaps worse. Furthermore, since Mayor Moore has spoken for the City of Jerome, did in fact the City Council of Jerome authorize Mayor Moore to make this recommendation? Was Counselor Christhopher H. Meyer as the Counsel of Jerome Cheese complicit in reviewing this endorsement and recommendation by Mayor Moore to the Idaho State Department of Water Resources? I note Counselor Meyer was copied by Mayor Moore. Does Counselor Meyer also represent the City of Jerome or does Mayor Moore only copy the Counselor of Jerome Cheese and not the Counselor of the City of Jerome on matters involving both the City of Jerome and Jerome Cheese. More points could be made but this is sufficient for a decision.

State Senator Jon Sandy (Who voted yes for the infamous Dairy Waste Guidelines) is involved in drying up land and stripping the water rights for sale to Jerome Cheese and industrial dairies as a part of this entire Jerome Cheese program. Where does the legality and the morality of this act intersect? I will leave it to you to determine whether it is ethical.

Idaho is one of only 13 states that does not have an ethics commission. Furthermore the Center For Public Integrity ranked Idaho dead last with

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JUL 26 2000

Vermont for not disclosing the conflict of interest committed by public officials and instead keeping them under wraps. Have we become so compromised by a few large players from the dairy industry that even our public officials are nothing more than marionettes dangling by a few short strings. Are the people simply there to be manipulated by the slick corporate attorneys and bullied by a couple of primitive thugs hired as lobbyists? Perhaps what I was taught growing up on a rock pile farm with an out house over near Buhl is no longer practiced in Magic Valley. Those tough minded people thrived on self determination but perhaps they are the grist of history now.

In summary I would like to quote former Governor Smylie:

"... I have a notion the public would be outraged if they really knew the price of all the perquisites with which we have rewarded our public servants, past and present..." A perceptive person can certainly see the wisdom of these words when considering the actions of the people involved in this entire Jerome Cheese saga.

I trust, subject only to verification of the attached letter as being authentic, that Mayor Moore will be judiciously relieved of his duties as Mayor of Jerome so he will be free to devote full and undivided time to promoting the interests of Jerome Cheese.

Thank you for your time and consideration.

Sincerely,
Max D. Hatfield

Transcription of Mayor Moores Letter (A signed copy is available on request)

Quote

May 28, 1999

Mr. L. Glen Saxton
Idaho Department of Water Resources
P.O. Box 83720
Boise, ID 83720-0089

Dear Mr. Saxton:

You will hear from a number of recognized experts supporting the Jerome Cheese water transfer and how tree will not be a negative impact associated with it. Please accept this letter as my personal support of the proposed Jerome Cheese Company water transfer application. As Mayor of the City of Jerome and as a part time Jerome Cheese employee, I can list many positive impacts that Jerome Cheese has on this community.

The most critical issue we face is sustainable economic strength and growth. Jerome Cheese Company has contributed to the overall well being of this entire community. Approval of the water transfer will work well for the City of Jerome as well as for South Central Idaho.

Sincerely,
Dennis Moore

cc
Christhopher H. Meyer
Rex Minchey

End Quote
It is my understanding that Christopher H. Meyer is the counsel of Jerome Cheese and Rex Minchey is the Maintainence Manager of Jerome Cheese.

MICROFILMED
JUL 26 2000

RECEIVED
JUN 1 1999
Department of Water Resources

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

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

BEFORE THE
IDAHO DEPARTMENT OF WATER RESOURCES

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

Jerome Cheese,
Applicant

William K. Chisholm,
Lee J. Halper,
Protestants

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

Jerome Cheese,
Applicant

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

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

MICROFILMED
JUL 2 6 2000

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

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

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

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

Dated this 9th day of June, 1999.

GIVENS PURSLEY LLP

By _____
Christopher H. Meyer

Attorneys for Applicant
Jerome Cheese

MICROFILMED
JUL 26 2000

CERTIFICATE OF SERVICE

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

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

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

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

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

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

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

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

Christopher H. Meyer

MICROFILMED
JUL 26 2000

RECEIVED
JUN 15 1999
Department of Water Resources

Christopher H. Meyer, Esq. Email: chm@givenspursley.com
Michael C. Creamer, Esq. Email: mcc@givenspursley.com
GIVENS PURSLEY LLP Office: 208-388-1200
277 North 6th Street, Suite 200 Fax: 208-388-1300
P.O. Box 2720
Boise, Idaho 83701-2720
Counsel for Applicant Jerome Cheese Company

BEFORE THE
IDAHO DEPARTMENT OF WATER RESOURCES

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

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

I. WITNESSES

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

MICROFILMED
JUL 26 2000

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

Dated this 8th day of June, 1999.

GIVENS PURSLEY LLP

By _____
Christopher H. Meyer

Attorneys for Applicant
Jerome Cheese Company

MICROFILMED
JUL 26 2000

CERTIFICATE OF SERVICE

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

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

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

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

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

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

Christopher H. Meyer

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JUL 26 2000

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JUN 15 1999
Department of Water Resources

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

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

BEFORE THE
IDAHO DEPARTMENT OF WATER RESOURCES

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

Jerome Cheese,
Applicant

William K. Chisholm,
Lee J. Halper,
Protestants

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

Jerome Cheese,
Applicant

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

APPLICANT JEROME CHEESE'S SUBMISSION OF WITHHELD DOCUMENTS

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JUL 26 2000

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

Dated this 11th day of June, 1999.

GIVENS PURSLEY LLP

By _____
Christopher H. Meyer

Attorneys for Applicant
Jerome Cheese

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JUL 26 2000

LIST OF DOCUMENTS SUBJECT TO IN CAMERA INSPECTION[1]

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

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

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JUL 26 2000

CERTIFICATE OF SERVICE

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

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

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

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

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

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

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

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

Christopher H. Meyer

MICROFILMED
JUL 26 2000

RECEIVED
JUN 15 199_
Department of Water Resources

GIVENS PURSLEY LLP

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

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

Gary G. Allen
Christopher J. Beeson
Michael C. Creamer
Thomas E. Dvorak
Roy Lewis Eiguren
Jeffrey C. Fereday
L. W. Grant III
Richard W. Jankowski
Karl T. Klein
David R. Lombardi
Kimberly D. Maloney
Kenneth R. McClure
Cynthia A. Melillo
Christopher H. Meyer
L. Edward Miller
Patrick J. Miller
Judson B. Montgomery
Angela K. Nelson
W. Hugh O'Riordan
Kenneth L. Pursley
Conley Ward
Stephanie C. Westermeier
Robert B. White
Raymond D. Givens
James A. McClure
OF COUNSEL

June 11, 1999

Mr. L. Glen Saxton
Idaho Department of Water Resources
1301 N. Orchard
Statehouse Mail
Boise, ID 83720-9000

Re: Jerome Cheese; Transfer Nos. 5401 and 5436
Our File No. 5472-1

Dear Mr. Saxton:

Enclosed is a letter from Protestant Darcy Thornborrow stipulating to the proposed hearing procedures. We have not yet received signed agreements from the other protestants. If they are received, they will be forwarded on to you.

Sincerely,

Christopher H. Meyer

Enclosure

cc: William K. Chisholm
Lee J. Halper
Michael Ihler
Darcy Thornborrow

CHM:baf
S:\Clients\5472\1\Corr\1999-06-11 CHM Ltr to G. Saxton - re June 4 1999 Ltr Agreement.wpd

MICROFILMED
JUL 26 2000

RECEIVED
JUN 15 1999
Department of Water Resources

Sincerely,

H. Meyer
Cheese Company

Post-it® Fax Note 7671 | Date 6/11/99 | # of pages ▶
To Barbara | From D. M. Thornbor
Co./Dept. | Co.
Phone # | Phone #
Fax # 208-388-1300 | Fax # 208 736 4712

AGREEMENT

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

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

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

Dated: 6/10/99 Sign here: D M Thornborrow

Print name here: D. M. Thornborrow

S:\Client\5472\1\Corr\1999-06-04 CHM Ltr to Protestants - Re stipulation to avoid prehearing conference.wpd

MICROFILMED
JUL 26 2000

ORIGINAL

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

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

RECEIVED
JUN 14 1999
Department of Water Resources

BEFORE THE
IDAHO DEPARTMENT OF WATER RESOURCES

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

Jerome Cheese,
Applicant

William K. Chisholm,
Lee J. Halper,
Protestants

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

Jerome Cheese,
Applicant

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

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

MICROFILMED
JUL 26 2000

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

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

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

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

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

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

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JUL 26 2000

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

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

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

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

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JUL 26 2000

Rex Minchey.[2]

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

Dated this 12th day of June, 1999.

GIVENS PURSLEY LLP

By _____
Christopher H. Meyer

Attorneys for Applicant
Jerome Cheese

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

MICROFILMED
JUL 26 2000

CERTIFICATE OF SERVICE

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

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

Original to:
Mr. Karl J. Dreher
Director
Idaho Department of Water Resources
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Mr. Michael Ihler
2635-A East 3100 North
Twin Falls, ID 83301
☑US Mail ☐Email ☐Fax ☐Hand ☐Overnight

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

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

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

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

Barbara Feasel

MICROFILMED
JUL 26 2000

EXHIBIT A

Letter from Scott F. McClure, P.E.

MICROFILMED
JUL 26 2000

June 12, 1999

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

McClure Engineering
MECHANICAL
STRUCTURAL
INDUSTRIAL

Dear Sir:

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

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

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

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

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

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

Sincerely,

Scott F. McClure, P.E.

McClure Engineering Inc.

MICROFILMED
JUL 26 2000

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

EXHIBIT B

Letter from J. Rex Minchey

MICROFILMED
JUL 26 2000



Jerome Cheese Co.
P.O. Box 485
47 West 100 South
Jerome, Idaho 83338
(208) 324-8806
Fax: 208-324-8892

June 12, 1999

For Submission to
The Idaho Department of Water Resources

Re: Water Right Transfer No. 5436

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

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

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

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

JUN 25 2000

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

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

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

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

Thank you

J Rex Minchey
Maintenance Manager
Jerome Cheese

MICROFILMED
2 8 2000

ORIGINAL

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

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

RECEIVED
JUN 14 1999
Department of Water Resources

BEFORE THE
IDAHO DEPARTMENT OF WATER RESOURCES

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

Jerome Cheese,
Applicant

Bill Chisholm,
Lee Halper,
Michael Ihler,
Darcy Thornborrow,
Protestants

NOTICE OF APPEARANCE

RECEIVED
JUN 09 1999
Department of Water Resources
Southern Region

TO: IDAHO DEPARTMENT OF WATER RESOURCES AND THE PROTESTANTS IN THE ABOVE-CAPTIONED MATTER:

PLEASE take notice that Christopher H. Meyer and Michael C. Creamer of the firm Givens Pursley LLP hereby enter their appearance as attorneys of record for the Applicant, Davisco Foods International, Inc., dba Jerome Cheese, in the above-captioned matter.

Pursuant to Procedure Rule 203 (IDAPA 37.01.01.203), Procedure Rule 302 (IDAPA 37.01.01.302), and Procedure Rule 303 (IDAPA 37.01.01.303), all parties are hereby notified and required to serve any subsequent filings in this matter upon the

MICROFILMED
JUL 26 2000

above-named counsel.

DATED this 7th day of June, 1999.

GIVENS PURSLEY LLP

By _____
Christopher H. Meyer

Attorneys for Applicant
Jerome Cheese

MICROFILMED
JUL 26 2000

CERTIFICATE OF SERVICE

I hereby certify that on June 7, 1999 I caused to be served a true and correct copy of the foregoing to each of the persons named below by the method indicated below each of their names.

Mr. Bill Chisholm
19073 E. Hwy. 30
Buhl, ID 83316
☑ U.S. Mail ☐ Fax ☐ By hand ☐ Overnight

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

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

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

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

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

Christopher H. Meyer

JUL 26 2000

June 11, 1999

RECEIVED
JUN 14 1999
Department of Water Resources

L. Glen Saxton
IDWR
PO Box 83720
Boise, ID 83720

Dear Mr. Saxton,

Regarding your fax of June 10 asking me to stop sending E-mails to you via Norm Young's address. Back in the beginning I asked Norm if he would be so kind as to do this, he agreed and has not asked me to stop. From time to time I have questions of Norm that are not directly related to my Protest and I address those strictly to him. When I want the letter to go to you, I add your name to his in the address line. I assumed he would immediately pass these directly to you. If this is a problem for Norm, I will only E-mail him when I wish to talk to him directly.

As for this being ex parte contact, are you referring to contact with Norm? I did not realize that if he sees something destined for you and the other participants in Jerome Cheese's Application and Protest that it is ex parte contact. If this is the case, I will immediately cease. However, as I usually Copy all the participants with each of these letters, there is no ex parte contact, unless, again, it is the fact that Norm may be reading these letters.

I realize that an E-mail is not statutorily recognized and that is why I follow with regular mail to those who require or want it, namely yourself and Chris Meyer. All the other people who are a party to this are quite satisfied with E-mail as they can store it and/or hard copy it. As to your statement "As a practical matter, all parties to a contested matter likely do not have the capability of receiving E-mail and hence are placed at a distinct disadvantage in not being able to receive information instantaneously as can some of the parties." In reality, faxes are more likely to be found in homes through the use of computers hooked to the Internet. I realize all law offices and Public Agencies have these luxuries but statistically, most PC's have them built in.

In this Case, all participants have E-mail AND faxes except, as far as I know, you do not have E-mail, except through Norm. Thus, no one in this matter is at a disadvantage since all receive the same information on their computers at the same time. Whether they read it immediately or get to it a few days later, as some do with regular mail, is up to them.

In reviewing the only E-mails I could find I sent to you on June 9, one was sent to all parties and hard copied to you and Chris (Titled Response to 2nd Motion) whereas the other (Titled Re: Please see attached Motion) was correspondence between Chris and I on Discovery dates which I thought you should be aware of as it referred back to earlier correspondence to you on this matter.

MICROFILMED
JUL 26 2000

Please let me know the title of the third letter in question so that if it qualifies as ex parte, I will immediately send it to all parties with an apology. Thank you.

Sincerely,



Lee Halper

Reg. Mail to: Glen Saxton
E-Mail to: Chris Meyer
Mike Ihler
Darcy Thornborrow
Bill Chisholm
Allen Merritt
Norm Young

MICROFILMED
JUL 26 2000

RECEIVED
JUN 14 1999
Department of Water Resources

Lee J. Halper
331 S 230 W
Jerome, ID 83338
208-324-2240
208-324-4422 fax

BEFORE THE DIRECTOR

IDAHO DEPARTMENT OF WATER RESOURCES

In the Matter of Application of Jerome Cheese Company For Water Rights Transfer No. 5401 (Water Right No. X36-07337E), Jerome Cheese Company, Applicant	Protestant's Second Motion to Issue Subpoenas

Lee Halper, Protestant

COMES NOW Protestant Lee Halper and issues his Second Motion to Issue Subpoenas.

On June 1, 1999 Protestant hand delivered prepared for signature Subpoenas to the Department wherein he found for the first time that his Motion to Issue Subpoenas had been denied for stated reasons. A Department letter of June 7, 1999, made Protestant aware that his E-mail and Postal Department mailing of the E-mail could not be treated as a Motion. Protestant seeks to remedy those stated reasons and conditions through this Second Motion by identifying reasons each Witness must be Subpoenaed, their relevant knowledge and testimony to be elicited. Also, on June 10, Protestant objected to the Department's requirement to "...specifically identify the documents, reports, studies and fact sheets that you are seeking from each party and a detailed reason for the request." contained in the June 7 letter by issuing an E-mail to all parties. This objection is attached to this Motion.

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JUL 25 2000

Generally, all issues of 42-222 can be adequately addressed by all these witnesses to some degree.

John Sandy. He is the original holder of the proposed water right to be transferred. His listing as a Witness on Applicant's list does not mean he will appear and his testimony as to certain allegations made by Applicant are critical to those allegations that appear in the Contractual agreement between these two parties.

Laird Noh. His knowledge of the history and the responsibilities of the Legislature and IDWR in matters such as this is without equal and can impart great meaning to the 'public interest' aspect of this protest.

Sonny Buhider. Ph.D. in Chemistry and has a long history of experience with water quality and impacts of influences and is an 'expert' witness. As he works for DEQ, a subpoena is required to not taint the Department's reputation with possible bias allegations. (This also applies to all other listed Government employees regardless of the Department).

Mike McMasters. Long time head field man in Twin Falls DEQ and his wide range of experience and knowledge of local history makes him an 'expert' witness.

Mike Echeverri. Also Twin Falls DEQ with his own area of water quality expertise.

Brad Gilmore. Twin Falls City Environmental Engineer. As he coordinates municipal duties with State Agencies such as DEQ, his knowledge as an expert covers this field of experience.

Marv Patten. Chief of the Dairy Bureau of I.S.D.A. and as part of the 'public interest' issue involved in this protest has to do with dairies, his knowledge of this is vital to this concern.

Lewis Eilers. As head lobbyist for the Dairy Industry, his knowledge overlaps that of Mr. Patten's and completes the picture of the Dairy Industry.

Jim Stanton. His confirmation of a written report and the resulting history and outcome of that history is necessary for first hand

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JUL 2 6 2000

confirmation of Department action on this water right.

Donna West. As DEQ's water quality specialist, her testimony as to the responsibilities, funding, trends, future policies, etc. are vital to 'public interest' issues.

Stan Clark. Though I have tried to discover through letters and E-mails what the Governor's policies and future projections for water policies are, I have not been responded to and the Chief Representative of the People's water policies are of utmost importance to the future of our State.

Mike Mitchell. As chief engineer for ISDA, his knowledge and experience in the practical matters that concern the 'nuts and bolts' of the dairy industry is essential for his expertise and the public interest issues.

Kenneth Neely and Janet Crockett. As IDWR water experts, their testimony to explain IDWR studies and reports is essential to the public interest aspect of this protest.

Al Lance. As Attorney General, his opinion on applicable State Law and interpretations are necessary to show problems with certain statutes and the public interest aspect of this protest.

Scott Bybee. His work with the City of Jerome gives close local experience with the affected Municipality and the history involved.

Marj Schmidt. Jerome City Councilwoman whose long time experience with the City and the Applicant will shed practical and political light on public interest issues.

I apologize for my inexperience in these matters and for my 'shotgun' approach used before. Please note I have pared my list to people I think absolutely essential to my Protest.

For these reasons I respectfully request the Department sign and issue Subpoenas for the above named parties for the scheduled July 27 & 28, 1999 hearing at 9:00 AM at the Obenchain Building in Twin Falls, Idaho.

Dated June 10, 1999

Lee Halper-Protestant

MICROFILMED

JUL 26 2000

Subject: RESPONSE TO 2ND MOTION/SUBPOENA
Date: Wed, 09 Jun 1999 15:39:53 -0600
From: slvrchst@magiclink.com
To: "norm young/l.glen saxton" <nyoung@idwr.state.id.us>,
chris meyer <chm@givenspursley.com>, darcy & jack thornborrow <thorn@magiclink.com>,
bill chisholm <chisholm@rmci.net>, allen merritt <amerritt@idwr.state.id.us>,
mike ihler <ieeeeee@cyberhighway.net>

Dear Mr. Saxton,
I got your letter of June 7 which let me know that my 2nd Motion to Issue Subpoenas was not in the proper form. I will remedy that. In terms of the Duces Tecum Subpoenas wherein you say:

"There likely are volumes of information which fit within this description and have nothing to do with the protested applications for transfer. I do not plan to receive into evidence proposed exhibits which are not relevant to the proceeding. Hence, in order for the department to further consider the issuance of subpoenas, you need to specifically identify the documents, reports, studies and fact sheets that you are seeking from each party and a detailed reason for the request."

I agree with the first two sentences of this paragraph. However, I disagree with your interpretation of the purpose and scope of the Subpoenas. Subpoenas do not deal with admissibility or relevancy at the subject Hearing, but rather, the Subpoenas simply mandate the presence of the documents. Your point is well taken, there are volumes, and until those volumes are reviewed it is impossible for the Protestants, or anyone, to determine what of those volumes of information is relevant to the instant proceeding. Without the Subpoenas, there is no way to get this voluminous information. What you are creating is a circle logic, which, if followed, would throw the purpose of Subpoenas completely on its head. Your job as Hearing Officer, as you know, is to rule on the relevancy and the admissibility of documents to be placed into the record, not to restrict examination of clearly discoverable information no matter how big the pile of paper. I respectfully request that you reconsider your position on this matter. I will re-issue my motion in the proper format and would request a favorable ruling. Thank you. Lee Halper

6/10/99

MICROFILMED
JUL 26 2000

CERTIFICATE OF MAILING

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

Lee Halper-Protestant

Christopher H. Meyer
Givens Pursley LLP
PO Box 2720
Boise, ID 83701-2720
208-388-1300
US MAIL

L. Glen Saxton
IDWR
PO Box 83720
Boise, ID 83720-0098
208-327-7866
US MAIL

Bill Chisholm
19073 E. HWY 30
Buhl, ID 83316
US MAIL

MICROFILMED
JUL 26 2000

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

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

RECEIVED
JUN 14 1999
Department of Water Resources
Southern Region

BEFORE THE
IDAHO DEPARTMENT OF WATER RESOURCES

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

Jerome Cheese,
Applicant

William K. Chisholm,
Lee J. Halper,
Protestants

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

Jerome Cheese,
Applicant

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

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

MICROFILMED
JUL 26 2000

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

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

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

Dated this 9th day of June, 1999.

GIVENS PURSLEY LLP

By _____
Christopher H. Meyer

Attorneys for Applicant
Jerome Cheese

MICROFILMED
JUL 26 2000

CERTIFICATE OF SERVICE

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

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

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

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

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

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

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

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

Christopher H. Meyer

MICROFILMED
JUL 26 2000

EXHIBIT A

Letter of June 4, 1999

MICROFILM
JUL 26 2000

FILE COPY

GIVENS PURSLEY LLP

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

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

Gary G. Allen
Christopher J. Beeson
Michael C. Creamer
Thomas E. Dvorak
Roy Lewis Eiguren
Jeffrey C. Fereday
L. W. Grant III
Richard W. Jankowski
Karl T. Klein
David R. Lombardi
Kimberly D. Maloney
Kenneth R. McClure
Cynthia A. Melillo
Christopher H. Meyer
L. Edward Miller
Patrick J. Miller
Judson B. Montgomery
Angela K. Nelson
W. Hugh O'Riordan
Kenneth L. Pursley
Conley Ward
Stephanie C. Westermeier
Robert B. White

Raymond D. Givens
James A. McClure
OF COUNSEL

Via Facsimile

June 4, 1999

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

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

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

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

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

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

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

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

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

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

MICROFILMED
JUL 26 2000

Sincerely,



Christopher H. Meyer
For Jerome Cheese Company

CHM:baf

AGREEMENT

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

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

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

Dated:_____ Sign here:_____

Print name here:_____

S:\Clients\5472\1\Corr\1999-06-04 CHM Ltr to Protestants - Re stipulation to avoid prehearing conference.wpd

MICROFILMED
JUL 26 2000

ORIGINAL

RECEIVED
JUN 14 1999
Department of Water Re...

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

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

BEFORE THE
IDAHO DEPARTMENT OF WATER RESOURCES

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

Jerome Cheese,
Applicant

William K. Chisholm,
Lee J. Halper,
Protestants

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

Jerome Cheese,
Applicant

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

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

MICROFILMED
JUL 26 1999

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

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

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

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

Dated this 9th day of June, 1999.

GIVENS PURSLEY LLP

By _____
Christopher H. Meyer

Attorneys for Applicant
Jerome Cheese

MICROFILMED
JUL 25 2000

CERTIFICATE OF SERVICE

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

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

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

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

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

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Idaho Department of Water Resources
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Boise, ID 83720-9000
☑US Mail ☐Email ☐Fax ☐Hand ☐Overnight

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

Christopher H. Meyer

MICROFILMED
JUL 26 2000

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RECEIVED
JUN 14 1999
Department of Water Resources

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

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

BEFORE THE
IDAHO DEPARTMENT OF WATER RESOURCES

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

Jerome Cheese,
Applicant

William K. Chisholm,
Lee J. Halper,
Protestants

APPLICANT JEROME CHEESE'S THIRD SUPPLEMENTAL DISCLOSURE OF WITNESSES

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

I. WITNESSES

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

MICROFILMED
JUL 26 2000

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

Dated this 8th day of June, 1999.

GIVENS PURSLEY LLP

By _____
Christopher H. Meyer

Attorneys for Applicant
Jerome Cheese Company

MICROFILMED
JUL 26 2000

CERTIFICATE OF SERVICE

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

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

Original to:
Mr. Karl J. Dreher
Director
Idaho Department of Water Resources
1301 N. Orchard St.
Statehouse Mail
Boise, ID 83720-9000
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Mr. Lee J. Halper
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Christopher H. Meyer

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

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

June 14, 1999

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

Dear Interested Party:

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

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

Sincerely,

Julie L. Yarbrough

JULIE L. YARBROUGH, Administrative Assistant
Water Allocation Bureau

Enclosure

c: Allen Merritt - IDWR Southern

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To Glen Saxton	From Allen Merritt	
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Fax #	Fax #	

BEFORE THE IDAHO STATE DEPARTMENT OF WATER RESOURCES

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

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

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

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

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

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

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

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

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

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

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

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

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

DATED this 10th day of June, 1999.

FREDERICKSEN, WILLIAMS & MESERVY

By: _____
ROBERT E. WILLIAMS
Attorney for Petitioner

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CERTIFICATE OF SERVICE

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

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

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

Bill Chisolm
19073 East Highway 30
Buhl, ID 83316

Lee Halper
321 South 230 West
Jerome, ID 83338

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

Darcy Thornborrow
1676 East 3800 North
Buhl, ID 83316

DATED: 6/10/99

ROBERT E. WILLIAMS

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Department of Water Resources

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BEFORE THE
IDAHO DEPARTMENT OF WATER RESOURCES

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

Jerome Cheese,
Applicant

William K. Chisholm,
Lee J. Halper,
Protestants

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

Jerome Cheese,
Applicant

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

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

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INTRODUCTION

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

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

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

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ARGUMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Here is another formulation by our Supreme Court:

> Standing is that aspect of justiciability focusing on the

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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mandatory water quality standards.

Shokal at 451-52.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

But this is no ordinary case.

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

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

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

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

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

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

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

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

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

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CONCLUSION

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

Dated this 10th day of June, 1999.

GIVENS PURSLEY LLP

By _____
Christopher H. Meyer

Attorneys for Applicant
Jerome Cheese

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CERTIFICATE OF SERVICE

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

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

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

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

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

Allen D. Merritt, P.E.
Southern Regional Manager
Idaho Department of Water Resources
1341 Fillmore St., Ste. 200
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Mr. L. Glen Saxton
Idaho Department of Water Resources
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Ms. Darcy Thornborrow
1676 East 3800 North
Buhl, ID 83316
☑ US Mail ☐ Email ☐ Fax ☐ Hand ☐ Overnight

Christopher H. Meyer

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EXHIBIT A

Responses to Chisholm's First Discovery

Christopher H. Meyer, Esq.
Michael C. Creamer, Esq.
GIVENS PURSLEY LLP
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P.O. Box 2720
Boise, Idaho 83701-2720
Counsel for Applicant Jerome Cheese

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

BEFORE THE
IDAHO DEPARTMENT OF WATER RESOURCES

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

Jerome Cheese,
Applicant

William K. Chisholm,
Lee J. Halper,
Protestants

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

Jerome Cheese,
Applicant

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

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

Comes now Applicant Davisco Foods International, Inc., dba Jerome Cheese, by and through its undersigned counsel, and in response to *Bill Chisholm's First Set of Interrogatories And Requests For Production of Documents Directed to Jerome Cheese Co.* states as follows.

GENERAL OBJECTION: The interrogatories and all of their subparts constitute over forty questions in violation of the Idaho Rules of Civil Procedure. Notwithstanding such objection and without waiving same, Applicant responds as set out below.

RIGHT TO SUPPLEMENT: Jerome Cheese has responded as fully as practicable to these discovery requests. It reserves the right to supplement these responses as additional material and information is discovered or becomes available.

SERVICE: In anticipation of the informal consolidation of Transfer Nos. 5401 and 5436, these responses are being served on all four Protestants involved in both transfers.

RESERVATION OF RIGHTS: None of these responses or documents produced constitute a waiver by Jerome Cheese of any objection to their admission.

INTERROGATORY NO. 1: Please identify each person known to you or to your attorneys who has or may have knowledge of any fact pertinent or relevant as to your proposed Water Transfer Application No. 5401. In your answer to this interrogatory, please include any person who has been retained, hired or relied upon by you, your agents or representatives to review and issues raised by the Application. In your answer, please provide the full name, mailing address, physical address and phone number of each person identified.

RESPONSE TO INTERROGATORY NO. 1:

The Applicant objects to this interrogatory as being over broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence in that it requests, without limitation, the identification of every person with knowledge of the application. Notwithstanding such objections and without waiving same, the Applicant states as follows. The following persons may have knowledge of facts pertinent or relevant to the proposed transfer:

Lee Gleasemann, E.L.T
Scott McClure
McClure Engineering
P.O. Box 1404
Twin Falls, ID 83303

Brian Reed, E.I.T
Staff Engineer
Division of Environmental Quality
601 Pole Line Road, Ste. 2
Twin Falls, ID 83301-3035
Office: 208-736-2190

Charles E. Brockway, Ph.D., P.E.
Charles G. Brockway, Ph.D., P.E.
Brockway Engineering, P.L.L.C.
2016 Washington Street North, Ste. #4
Twin Falls, ID 83301
Office: 208-736-8543

Mr. William K. Chisholm
19073 E. Hwy. 30
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Home: 208-543-4418

Michael C. Creamer, Esq.
Givens Pursley LLP
277 N. 6th St., Ste. 200
P.O. Box 2720
Boise, ID 83701
Office: 388-1247

Mr. Jon Davis
General Manager
Jerome Cheese
47 West 100 South
P.O. Box 485
Jerome, ID 83338
Office: 208-324-8806

Mr. Bill Riebesell
Plant Superintendent
Jerome Cheese
47 West 100 South
P.O. Box 485
Jerome, ID 83338
Office: 208-324-8806

Mr. Karl J. Dreher
Director
Idaho Department of Water Resources
1301 N. Orchard St.
Statehouse Mail
Boise, ID 83720-9000
Office: 327-7920

Mr. Gary Funderburg
Idaho Department of Water Resources
1341 Fillmore St., Ste. 200
Twin Falls, ID 83301-3380
Office: 208-736-3033

Mr. Lee J. Halper
331 South 230 West
Jerome, ID 83338
Home: 208-324-2240

The Honorable Dennis Moore
Mayor of the City of Jerome
152 East Avenue A
Jerome, ID 83338
Office: 208-324-8189

Craig D. Hobdey, Esq.
Hobdey & Hobdey
125 Fifth Ave. W.
P.O. Box 176
Gooding, ID 83330-0176
Office: 208-934-4429

Paul K. Hunter, P.G.
Project Hydrogeologist
EnviroSearch International
1605 N. 13th St.
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Office: 345-8292

Mr. Michael Ihler
2635-A East 3100 North
Twin Falls, ID 83301
Home: 208-734-7930

Mr. Scott L. Bybee,
J-U-B Engineers, Inc.
800 Falls Avenue
Twin Falls, ID 83301-3366
Office: 208-733-2414

Dr. Richard K. Kelsey
Senior Vice President
EnviroSearch International
1605 N. 13th St.
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Office: 345-8292

Allen D. Merritt, P.E.
Southern Regional Manager
Idaho Department of Water Resources
1341 Fillmore St., Ste. 200
Twin Falls, ID 83301-3380
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Christopher H. Meyer, Esq.
Givens Pursley LLP
277 N. 6th Street, Ste. 200
P.O. Box 2720
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Office: 208-388-1236

Mr. J. Rex Minchey
Maintenance Manager
Jerome Cheese
47 West 100 South
P.O. Box 485
Jerome, ID 83338
Office: 208-324-8806

Senator John A. Sandy
3104 South 1200 East
Hagerman, ID 83332
(Vendor of water right, Transfer No. 5401)

Mr. Lewis Eilers
Executive Director
Idaho Dairymen's Association
890 Shoshone St. East
Twin Falls, ID 83301
Office: 208-736-1953

Mr. Roy Hincks
2851 W. 900 S.
Sterling, ID 83210
Home: 208-328-2440
(Vendor of water right, Transfer No. 5436)

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Mr. L. Glen Saxton
Idaho Department of Water Resources
1301 N. Orchard
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Boise, ID 83720-9000
Office: 208-327-7955

Mr. James E. Stanton
Sr. Water Resource Agent
Idaho Department of Water Resources
1341 Fillmore St., Ste. 200
Twin Falls, ID 83301-3380
Office: 208-736-3033

Darcy Thornborrow
1676 East 3800 North
Buhl, ID 83316
Home: 208-543-5030

Mr. Charles H. Correll
City Councilman
City of Jerome
152 East A.
Jerome, ID 83338
Office: 208-324-8189

Mr. Ralph Peters
City Councilman
City of Jerome
152 East A.
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Office: 208-324-8189

Ms. Marjorie Schmidt
City Councilwoman
City of Jerome
152 East A.
Jerome, Id 83338
Office: 208-324-8189

Mr. Joe Skaug
City Councilman
City of Jerome
152 East A.
Jerome, ID 83338
Office: 208-324-8189

Each of the County Commissioners
of Jerome County

Various unknown staff
of the Idaho Division of Environmental Quality

Various unknown staff
of the Idaho Department of Agriculture

INTERROGATORY NO. 2: Please state each and every theory, claim, fact, supposition, scientific study, research or defense upon which you rely as a basis for your claim that this transfer is in compliance with the requirements as stated in Idaho Code 42-222.

ANSWER TO INTERROGATORY NO. 2: The Applicant objects to this interrogatory as being over broad and unduly burdensome in that it may be read to call for an articulation of the Applicant's entire presentation at the upcoming hearing. Moreover, the scope of issues to be heard has not yet been established by the Department. In addition the Protestants have provided to date minimal information—not to mention evasive, unresponsive and entirely unsatisfactory discovery responses—describing the nature and basis of their protests. The question also calls for speculation in that it requests identification at this time of theories, facts, etc. which will respond to and rebut issues and arguments which the Protestants' have not yet articulated. The Applicant will do its best at the hearing to respond to issues raised at that time, but it cannot be expected to anticipate them here and respond in advance. In addition, the Applicant objects on the grounds that the interrogatory calls for information protected by the attorney/client privilege and the attorney work product rule. Notwithstanding such objections and without waiving same, the Applicant states as follows:

The proposed water right transfer complies with the requirements of Idaho Code § 222(1), to wit: "The director of the department of water resources shall examine all the evidence and available information and shall approve the change in whole, or in part, or

upon conditions, provided no other water rights are injured thereby, the change does not constitute an enlargement in use of the original right, the change is consistent with the conservation of water resources within the state of Idaho and is in the local public interest as defined in section 42-203A(5), Idaho Code, and the new use is a beneficial use ...."

With respect to injury, the Applicant will show that the transfer will not result in any increase in the net depletion of the water. The Applicant will show that the former place of use will no longer be served by the part of the water right transferred. The Applicant will show that only the consumptive use portion of the water right is sought to be transferred. The Applicant will also show that the new points of diversion will draw on the same aquifer as the previous points of diversion. The Applicant will show that the new points of diversion will not result in interference with other water rights. The Applicant will show that the change in season and type of use will have no adverse impact on any water user.

With respect to enlargement, the Applicant will show that the proposed change will not result in any greater diversion rate, diversion volume, application, or consumptive use than before the change. In addition, the Applicant's issues on injury overlap with and will respond to the "no enlargement" requirement. See description of water rights attached hereto.

With respect to conservation, the Applicant will show that the proposed use of the water right is consistent with the Prior Appropriation Doctrine, including requirements of beneficial use and the concept of duty of water. The Applicant will further show that it has employed state-of-the art water conservation practices.

With respect to the local public interest, the Applicant will show that the transfer will not adversely affect water resources, the environment, or the economy, and that the proposed water use provides jobs, enhances the community and regional economy, and does not contribute to environmental degradation. The Applicant contends that the local public interest test is not intended to authorize the Idaho Department of Water Resources to look beyond these issues, and does not authorize the Department to evaluate the secondary and tertiary impacts of the Jerome Cheese on the Protestants' preferred life style, and specifically does not authorize the Department to evaluate the impacts of dairy production which Jerome Cheese does not own or control. Nor does the local public interest test authorize the Department to dictate whether a particular beneficial water use is better than another beneficial water use. Nor does the local public interest test authorize the Department to dictate whether the Applicant should select one water supply over another water supply. Nor does the local public interest test authorize the

Department to consider individual competitive effects of particular water transfers.

The Applicant contends that the Protestants do not have standing to raise any issues with respect to injury or enlargement, and have only limited standing with respect to conservation and local public interest, because they do not own any water rights which could be impacted by the proposed transfer.

INTERROGATORY NO. 3: Please identify every document of which you are aware that supports or tends to support your answer to Interrogatory No. 2 above.

ANSWER TO INTERROGATORY NO. 3: The Applicant renews and incorporates here each of its objections made in response to Interrogatory No. 2 above. Notwithstanding such objections and without waiving same, the Applicant states as follows:

The application is supported by the statements set out in the application filed by the Applicant in this matter, and by each of the pleadings, correspondence, and documents filed with the Department in this matter. It is also supported by the documents which are produced herewith.

INTERROGATORY NO. 4: Please identify all employees, suppliers or investors, of Jerome Cheese Co. who hold public office, or sit on any board that may have regulatory authority over any aspect of Jerome Cheese's operations, or whose relatives hold such positions of authority. In your answer, please provide the names, addresses and telephone numbers, payscale, job description, length of employment, shift position, office held, type of supplier, amount of investment.

ANSWER TO INTERROGATORY NO. 4: The Applicant objects to this interrogatory as being over broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Neither the ownership of Jerome Cheese, nor any suggestion of impropriety, was identified as an issue in this contested case by the Protestants in their protest or at the pre-hearing conference. Notwithstanding such objections and without waiving same, the Applicant states as follows:

To the best of the company's knowledge, no employee, supplier of or investor in Jerome Cheese, nor any relative thereof, holds any public office or sits on any board that may have regulatory authority over any aspect of Jerome Cheese's operations with the exception of the following:

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Mr. Dennis Moore has been employed at Jerome Cheese for over three years in yard maintenance with a flexible shift. He also serves as Mayor of the City of Jerome.

Mr. David Moore has been employed at Jerome Cheese for over six years as an operator on the day shift. He is the son of Dennis Moore.

Neither person is in a position of management or similar authority at Jerome Cheese.

Jerome Cheese declines to provide their home addresses and telephone numbers on privacy grounds.

INTERROGATORY NO. 5: Please identify all owners, investors, partners, banks lienholders, mortgage companies, insurance companies or other people or parties who have a financial interest in Jerome Cheese and any of its affiliated subsidiaries, parent companies or other related business affiliations. In your answer, please specify the exact financial relationship for each party identified, including their positions, if any on the board, as employees, as stockholders, suppliers, or policy empowered shareholders, their names, their agents or representatives names, addresses, telephone numbers and place of employment.

ANSWER TO INTERROGATORY NO. 5: The Applicant objects to this interrogatory as being over broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. The Protestants have raised no issue in their protests or in the pre-hearing conference which has any bearing whatsoever on the information sought by this interrogatory. Moreover, finding, generating, collecting, or presenting the information would be difficult and unduly burdensome on the Applicant. Finally, the Applicant contends that disclosure of the financial information sought by this interrogatory would disclose confidential business information putting the Applicant at a competitive disadvantage. Notwithstanding such objections and without waiving same, the Applicant states as follows:

Davisco Foods International, Inc. dba Jerome Cheese is a closely held corporation incorporated in the State of Minnesota. It is wholly owned by Mark Davis and other family members.

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Mark Davis, President
Davisco Foods International, Inc.
620 North Main Street
Le Suer, Minnesota 56058
Office: 507-665-8811

The family member and owner residing in Idaho is Jon Davis, identified above.

INTERROGATORY NO. 6: Please list all the dairies which supply milk to your business. In your answer, please include the name of the dairy, the name of the owner and manager of the dairy, the address, phone number and legal description of the dairy, the average yearly gallons or pounds of milk supplied by that dairy, the contractual arrangement with the dairy, the base price formula paid to the dairy, the milk transportation costs charged to the dairy if any, and the average yearly reimbursement paid to the dairy for the product supplied and all knowledge you have or can easily determine and supply as to the number of milking cows at each of there [sic] dairies. Also any documentation that speaks to the size of dairies.

ANSWER TO INTERROGATORY NO. 6: The Applicant objects to this interrogatory as being over broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. The Protestants have failed to articulate any particular basis for opposition to the proposed water right transfer. To the extent that Protestants may contend that suppliers of milk to Jerome Cheese are harming the environment or otherwise not in the local public interest, such issues are beyond the scope of the local public interest test, irrelevant, and inadmissible. Moreover, finding, generating collecting, or presenting the information would be difficult and unduly burdensome on the Applicant. Finally, the Applicant contends that disclosure of the financial, contractual and business practice information sought by this interrogatory would disclose confidential business information putting the Applicant at a competitive disadvantage. Notwithstanding such objections and without waiving same, the Applicant states as follows:

Jerome Cheese purchases milk products from a variety of suppliers throughout the Magic Valley. All milk contracts are verbal. Each contract contains a provision requiring strict compliance with applicable environmental and health regulations, and provides financial penalties for violations.

INTERROGATORY NO. 7: Please verify whether Jerome Cheese's Memorandum of Agreement of 12/16/98 with John Sandy for the purchase of 33 inches of water has been extended past the 120 day deadline noted therein and an and [sic]

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extension agreement available by mutual consent contained therein been drafted and agreed to. Include in your answer, the persons or departments referred to in Section No. 5 and all documents or evidence obtained to determine this finding.

ANSWER TO INTERROGATORY NO. 7: The referenced contract was extended by a subsequent agreement. A second extension has been proposed. See documents produced herewith. For the convenience of the parties, we are also producing herewith proposed and final contract documents regarding the water right in Transfer No. 5436.

INTERROGATORY NO. 8: On page 2 of your Application to the Department for this transfer under the category "Remarks", you state "Process generates more waste water than what is brought into the plant." Please specify the source of the water that comes into your plant, the daily amount brought in and the daily amount processed out.

ANSWER TO INTERROGATORY NO. 8: Water is a by-product of cheese production. In other words, the extra water comes from the milk brought into the plant, which water is extracted during the cheese production process. Prior to disposal, the extracted water is used and reused numerous times during the production process pursuant to a state-of-the art recycling program. Jerome Cheese objects to the release of statistics regarding milk production on the ground that such information is confidential business information whose release would disadvantage the company. Moreover, Jerome Cheese is claiming no water right in this proceeding in connection with water it extracts from milk. Consequently, quantification of such volumes is unnecessary, burdensome, and irrelevant to this case.

INTERROGATORY NO. 9: Please state the exact reason or reasons for this water transfer. In your answer, delineate all possible scenarios of use, expanded use, future transfer of use, sale, hold for sale, or other possible.

ANSWER TO INTERROGATORY NO. 9: In response to the first question contained within Interrogatory No. 9, the reason the Applicant has filed for this water right transfer is to secure a viable, permanent, reliable, controllable, cost-effective, clean and independent source of water for its industrial use. In response to the second question, the Applicant objects that the question calls for speculation regarding unknown future scenarios. Notwithstanding such objections and without waiving same, the Applicants states:

No water is added to the cheese in the cheese making process. The Applicant uses water within the plant primarily for industrial cleaning purposes. A small amount of water is used for "domestic" purposes within the plant, such as drinking water, toilets,

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sinks, showers, washing up and safety facilities, and the like. In addition, some water is used for industrial irrigation of lawns, etc. on the grounds. This description is provided for illustrative purposes, and is not intended to be exclusive or restrictive.

INTERROGATORY NO. 10: Was the establishment of Jerome Cheese Co. the result of recruitment to Jerome County, Idaho by city, county, or state economic development agencies? If so what were the names of such agencies, the name and principal agents or officials involved. If there were enticements in such recruitment, list the type and economic value of any such enticements.

ANSWER TO INTERROGATORY NO. 10: The Applicant objects to this interrogatory as being over broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. The Protestants have failed to articulate any particular basis for opposition to the proposed water right transfer, and have said nothing in their pleadings or at the prehearing conference which remotely suggests any impropriety or other issue bearing on any incentives which may or may not have been offered to Jerome Cheese. To the extent that Protestants may choose to make an issue of any financial or other incentives which may have been offered to Jerome Cheese in connection with the location of its plant, the Applicant contends that such issues are beyond the scope of the local public interest test, irrelevant, and inadmissible. Moreover, finding, generating, collecting, or presenting records relating to the location of the plant would be difficult and unduly burdensome on the Applicant. Finally, the Applicant contends that disclosure of the information sought by this interrogatory would disclose confidential business information putting the Applicant at a competitive disadvantage. Notwithstanding such objections and without waiving same, the Applicant states as follows:

Prior to locating its current facility in Jerome, Jerome Cheese engaged in discussions with officials of the City of Jerome, Jerome County, and the State of Idaho in which a variety of issues were discussed, including services, taxation, land use and regulatory matters. Jerome Cheese was satisfied with those discussions, and relied upon them in making its decision to locate in Jerome. No special treatment was sought or received, nor was any written agreement entered into with any governmental body providing for incentives or other benefits in connection with the location of Jerome Cheese in Idaho.

INTERROGATORY NO. 11: Supply any and all documents, contracts and agreements that pertain to Interrogatory number 10.

ANSWER TO INTERROGATORY NO. 11: The Applicant incorporates here all

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objections made with respect to Interrogatory No. 10.

REQUEST FOR PRODUCTION NO. 1: Please produce each document described or identified or relied upon by you in your response any of the above Interrogatories 1 thru 11.

RESPONSE TO REQUEST FOR PRODUCTION NO. 1: The Applicant incorporates here each and every objection made above to Interrogatory Nos. 1 through 11. Notwithstanding such objections and without waiving same, Applicant is producing the documents identified on the List of Documents Produced, attached as exhibits hereto. Certain of these documents are being withheld pending resolution of Applicant's Motion in Limine and Motion for Protective Order which will be filed separately. All documents not being produced are clearly identified as such, and are being produced to the Hearing Officer on a confidential basis for "in camera" inspection pursuant to said motions.

Dated this 7th day of June, 1999.

GIVENS PURSLEY LLP

By _____
Christopher H. Meyer

Attorneys for Applicant
Jerome Cheese

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VERIFICATION

J. Rex Minchey, acting under authority of and on behalf of Jerome Cheese, being first duly sworn upon oath, deposes and says:

Jerome Cheese is the Applicant in the above-captioned matter. I serve as Maintenance Manager for Jerome Cheese and am authorized by Jerome Cheese to respond to all discovery in this matter on behalf of Jerome Cheese. I have read the foregoing requests and responses. The statements contained therein are true to the best of my knowledge and belief.

Dated: June 8, 1999

J. Rex Minchey
Maintenance Manager
Jerome Cheese

STATE OF IDAHO)
) ss.
COUNTY OF JEROME)

On this 8 day of June, 1999, before me, a Notary Public, personally appeared J. Rex Minchey, known or identified to me to be the Maintenance Manager of Jerome Cheese, whose name is subscribed to the foregoing instrument on behalf of said corporation, and acknowledged to me that s/he is authorized to and did execute the same on behalf of said corporation.

NOTARY PUBLIC for Idaho
Residing at Jerome, Jerome County, Idaho
My commission expires: 3/13/2003

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JUL 26 2000

LIST OF DOCUMENTS PRODUCED

1. Proposed First Addendum to Agreement with Roy Hincks (w/attachments)
2. Proposed Second Addendum to Agreement with John Sandy (w/attachments)
3. Correspondence with Craig Hobdey and Roy Hincks re water agreements (Hobdey, Dec. 17, 1998, April 16, 1999, May 7, 1999, June 5, 1999) (Hincks, June 5, 1999)
4. Memo of June 6, 1999 from CHM to Consultants
5. Appendix D — Standards for Water Sources
6. Letter from Chuck Brockway to DEQ (May 4, 1999)
7. Project Manual—Technical Specifications for New Well Installation
8. Well Driller's Report
9. Map of Jerome Area
10. Fax from Magic Valley Maid with pump drawings
11. Letter from Chuck Brockway to IDWR (May 5, 1999)
12. Map and Well Driller's Reports
13. Brockway notes
14. Letter from Chuck Brockway to Scott McClure (March 31, 1999)
15. Letter from Dennis Moore to IDWR (May 28, 1999)
16. Letter from Con P. Paulos to IDWR (June 4, 1999)

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LIST OF DOCUMENTS SUBJECT TO IN CAMERA INSPECTION[1]

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

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

MIC ATTACHED
JUL 26 2000

CERTIFICATE OF SERVICE

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

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

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

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

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

Christopher H. Meyer

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EXHIBIT B

Responses to Halper's First Discovery

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COPY

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Michael C. Creamer, Esq.
GIVENS PURSLEY LLP
277 North 6th Street, Suite 200
P.O. Box 2720
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Counsel for Applicant Jerome Cheese

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

BEFORE THE
IDAHO DEPARTMENT OF WATER RESOURCES

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

Jerome Cheese,
Applicant

William K. Chisholm,
Lee J. Halper,
Protestants

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

Jerome Cheese,
Applicant

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

APPLICANT JEROME CHEESE 'S RESPONSE TO LEE HALPER'S FIRST SET OF INTERROGATORIES, REQUESTS FOR ADMISSION, AND REQUESTS FOR PRODUCTION OF DOCUMENTS

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Comes now Applicant Davisco Foods International, Inc., dba Jerome Cheese, by and through its undersigned counsel, and in response to *Lee Halper's First Set of Interrogatories, Requests for Admissions, and Requests For Production of Documents Directed to Jerome Cheese Company* states as follows.

GENERAL OBJECTION: The interrogatories and all of their subparts constitute over forty questions in violation of the Idaho Rules of Civil Procedure. Notwithstanding such objection and without waiving same, Applicant responds as set out below.

RIGHT TO SUPPLEMENT: Jerome Cheese has responded as fully as practicable to these discovery requests. It reserves the right to supplement these responses as additional material and information is discovered or becomes available.

SERVICE: In light of the informal consolidation of Transfer Nos. 5401 and 5436, these responses are being served on all four Protestants involved in both transfers.

RESERVATION OF RIGHTS: None of these responses or documents produced constitute a waiver by Jerome Cheese of any objection to their admission.

Item 1 (Interrogatory No.1)

Please identify yourself (the person or persons responding to these discovery requests), and identify each and every person with whom you consulted in preparing these responses.

ANSWER:

These responses were prepared by J. Rex Minchey with the assistance of undersigned counsel. In preparing these responses, Mr. Minchey and undersigned counsel consulted with Jon Davis of Jerome Cheese, Michael C. Creamer of Givens Pursley LLP, Charles E. Brockway of Brockway Engineering, and Paul K. Hunter of EnviroSearch International.

Item 2 (Interrogatory No. 2)

Please state whether you have read and understood the instructions and

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introductory materials provided above.

ANSWER:

Yes

Item 3 (Interrogatory No. 3)

Please identify each person known to you or to your attorneys who has or may have knowledge of any fact pertinent or relevant as to your proposed Water Transfer Application No. 5401. In your answer to this Interrogatory, please include any person who has been retained, hired or relied upon by you, your agents or representatives to review any issues raised by the Application. In your answer, please provide the full name, mailing address, physical address and phone number of each person identified.

ANSWER:

Please see responses Responses to *Bill Chisholm's First Set of Interrogatories And Requests For Production of Documents Directed to Jerome Cheese Co.* (hereinafter "First Chisholm Discovery").

Item 4 (Interrogatory No. 4)

Please state each and every theory, claim, fact, supposition, scientific study, research or defense upon which you rely as a basis for your claim that this Transfer is in compliance with the requirements as stated in Idaho Code 42-222.

ANSWER:

Please see responses to First Chisholm Discovery.

Item 5 (Request for Production No.1)

Please identify every document of which you are aware that supports or tends to support your answer to Interrogatory 2 above.

ANSWER:

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Please see responses to First Chisholm Discovery.

Item 6 (Interrogatory No. 6)

Please identify all employees, full and part-time, of Jerome Cheese Company. In your answer, please provide their addresses, pay scale, job description, length of employment, and shift position. Please include all subcontractors and people and companies hired temporarily and/or providing an ongoing service, their names, addresses, telephone numbers and describe the services performed, pay issued and dates and times of service related to this question. In addition, please list the starting wage and benefit package for a new employee with no experience for each department and/or job description.

ANSWER:

Please see responses to First Chisholm Discovery.

Item 7 (Interrogatory No. 7)

Please identify all owners, investors, partners, banks, lienholders, mortgage companies, insurance companies or other people or parties who have a financial interest in Jerome Cheese Company and any of its affiliated subsidiaries, parent companies or other related business affiliations. In your answer, please specify that exact financial relationship for each party identified, including their positions, if any, on the board, as employees, as stockholders, or policy empowered shareholders, their names, their agents' or representatives names, addresses, telephone numbers and place of employment.

ANSWER:

Please see responses to First Chisholm Discovery.

Item 8 (Interrogatory No. 8)

Please list all dairies by which you are supplied milk for your business. In your answer, please include the name of the dairy, the name of the owner and manager of the dairy, the address, phone number and legal description of the dairy, the average yearly gallons or pounds of milk supplied by that dairy, the contractual arrangement with the dairy, the base price formula paid to the dairy, the milk transportation costs charged to

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the dairy, if any, and the average yearly reimbursement paid to the dairy for the product supplied, and all knowledge you have or can easily determine and supply as to the number of milking cows at each of these dairies.

ANSWER:

Please see responses to First Chisholm Discovery.

Item 9 (Interrogatory No. 9)

Please supply the names, addresses and telephone numbers of all people, companies, corporations or other entities to whom you supply and/or sell your cheese to. In your answer, please provide the contractual agreement with these entities, final destination address of shipment for end use of product sold, and the average yearly pounds of cheese shipped to each entity and the average yearly amount of reimbursement you receive for these shipments previously listed.

ANSWER:

Objection. This interrogatory is over broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. The Protestants have raised no issue in their protests or in the pre-hearing conference which has any bearing whatsoever on the information sought by this interrogatory. Moreover, finding, generating, collecting, or presenting the information would be difficult and unduly burdensome on the Applicant. Finally, the Applicant contends that disclosure of the financial and business information sought by this interrogatory would disclose confidential business information putting the Applicant at a competitive disadvantage.

Item 10 (Interrogatory No. 10)

Please verify whether Jerome Cheese's Memorandum of Agreement of 12\16\98 with John Sandy for the purchase of 33 inches of water has been extended past the 120 day deadline noted therein and an extension agreement available by mutual consent contained therein been drafted and agreed to. Include in your answer, the persons or departments referred to in Section No. 5 and all documents or evidence obtained to determine this finding.

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ANSWER:

Please see responses to First Chisholm Discovery.

Item 11 (Interrogatory No. 11)

On page 2 of your Application to the Department for this transfer under the category 'Remarks', you state "Process generates more wastewater than what is brought into the plant." Please specify the source of the wastewater that comes into your plant, the daily amount brought in and the daily amount processed out.

ANSWER:

Please see responses to First Chisholm Discovery.

Item 12 (Interrogatory No. 12)

Please state the exact reason or reasons for this water transfer. In your answer, delineate all possible and addressed scenarios of use, expanded use, future transfer of use, sale, hold for sale, cessation of present water supply agreements or other possibilities.

ANSWER:

Please see responses to First Chisholm Discovery.

Item 13 (Interrogatory No. 13)

Please provide an accounting of all water used and generated in the operation of the facility. In your answer, include all inputs, outputs and exported water, water used for manufactured product, water used for cleaning and sanitation, et cetera. This accounting should provide a detailed water usage summary and budget for past years and a forecast on future water use. Include a description of all water and wastewater measurement devices and methods or procedures used to monitor these devices. Please include all documents relating to the water and wastewater measurement devices. In your answer, please provide water conservation measures you have implemented for the last 5 years.

ANSWER:

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The information sought by this interrogatory is not available. To the extent that such information is generated during the course of preparation for the upcoming hearing, it will be produced.

Item 14 (Interrogatory No. 14)

Please provide a detailed history of your association with regards to your locating your business in Idaho. In your answer, include all people, groups, associations, cities, counties, entities with which you interacted from the time you first considered the possibility of locating in Idaho to the present. Please include all understandings, agreements, verbal contracts, and oral arrangements that passed between your Company and each of these people.

ANSWER:

Please see responses to First Chisholm Discovery.

Item 15 (Interrogatory No. 15)

Please provide a water budget for the whole water right X36-07337E for the last 5 years. In your answer, please provide water conservation measures you have implemented for the last 5 years.

ANSWER:

The information sought by this interrogatory is not available. To the extent that such information is generated during the course of preparation for the upcoming hearing, it will be produced.

Item 16 (Interrogatory No. 16)

Please provide any documentation that proves that you have only a verbal contract with Kraft Foods, International and/or any of its related companies. In your answer, include any contractual arrangements you have with Kraft Foods, as well.

ANSWER:

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Please see responses to First Chisholm Discovery.

Item 17 (Interrogatory No. 17)

Please provide any and all contracts that relate to sewer usage and/or wastewater treatment and fresh water supply with regards to your Company's operation in Jerome. In your answer, please provide all pre-contractual memos, notes, understandings, verbal agreements or other data or criteria that steered your Company to its present existing Contracts.

ANSWER:

Objection. This interrogatory is over broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. The Protestants have raised no issue in their protests or in the pre-hearing conference which has any bearing whatsoever on the information sought by this interrogatory. Moreover, finding, generating, collecting, or presenting the information would be difficult and unduly burdensome on the Applicant. Finally, the Applicant contends that disclosure of the financial and business information sought by this interrogatory would disclose confidential business information putting the Applicant at a competitive disadvantage.

Item 18 (Interrogatory No. 18)

Please provide a copy of your Industrial wastewater permit, a list of all violations, the resulting effects of those violation, the regulatory consequences and negotiations of those violations, the stated reasons for those violations and the Company's actions to ensure those violations would not recur. In your answer, please explain in the narrative a description of the above categorizations of violations.

ANSWER:

Objection. This interrogatory is over broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. The Protestants have raised no issue in their protests or in the pre-hearing conference which has any bearing whatsoever on the information sought by this interrogatory. Moreover, finding, generating, collecting, or presenting the information would be difficult and unduly burdensome on the Applicant. Finally, the Applicant contends that disclosure of the financial and business information sought by this interrogatory would disclose confidential business information putting the Applicant at a competitive disadvantage.

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Item 19 (Interrogatory No. 19)

Please provide a detailed list of all drugs, medicines, antibiotics, compounds, elements, viruses, bacteria, fungi, microbes and chemicals you test for in the milk. In your answer, provide the procedure, time frame, degree of accuracy, legal requirements, and process involved in this testing as well as all reporting agencies involved.

ANSWER:

Objection. This interrogatory is over broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. The Protestants have raised no issue in their protests or in the pre-hearing conference which has any bearing whatsoever on the information sought by this interrogatory. Moreover, finding, generating, collecting, or presenting the information would be difficult and unduly burdensome on the Applicant. Finally, the Applicant contends that disclosure of the financial and business information sought by this interrogatory would disclose confidential business information putting the Applicant at a competitive disadvantage.

Item 20 (Interrogatory No. 20)

Please provide the procedures involved if you find a contaminated (as per Item 19) truckload of milk. In your answer, describe the procedure for identifying the contaminated tanker, where the tanker is held, the time necessary for all tests to be run and how this affects the waiting tanker and the eventual destination of the contaminated milk.

ANSWER:

Objection. This interrogatory is over broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. The Protestants have raised no issue in their protests or in the pre-hearing conference which has any bearing whatsoever on the information sought by this interrogatory. Moreover, finding, generating, collecting, or presenting the information would be difficult and unduly burdensome on the Applicant. Finally, the Applicant contends that disclosure of the financial and business information sought by this interrogatory would disclose confidential business information putting the Applicant at a competitive disadvantage. Notwithstanding these objections and without waiving same, the Applicant refers the Protestant to Applicant's response to Interrogatory No. 6 of Chisholm's First Discovery.

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Item 21 (Interrogatory No. 21)

Please provide the annual budget and systems loading budget for your pretreatment facility.

ANSWER:

Objection. This interrogatory is over broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. The Protestants have raised no issue in their protests or in the pre-hearing conference which has any bearing whatsoever on the information sought by this interrogatory. Moreover, finding, generating, collecting, or presenting the information would be difficult and unduly burdensome on the Applicant. Finally, the Applicant contends that disclosure of the financial and business information sought by this interrogatory would disclose confidential business information putting the Applicant at a competitive disadvantage.

Item 22 (Interrogatory No. 22)

Please list all other places of business that are operated in direct association with your Company. In your answer, list the State, address, telephone number, name of Executive in Charge of the ancillary or subsidiary business, the degree of association both legally and financially.

ANSWER:

Objection. This interrogatory is over broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. The Protestants have raised no issue in their protests or in the pre-hearing conference which has any bearing whatsoever on the information sought by this interrogatory. Moreover, finding, generating, collecting, or presenting the information would be difficult and unduly burdensome on the Applicant. Finally, the Applicant contends that disclosure of the financial and business information sought by this interrogatory would disclose confidential business information putting the Applicant at a competitive disadvantage.

Item 23 (Interrogatory No. 23)

Please list all Company and Directors and Executive's charitable donations, political donations and contributions to community efforts made since locating to Idaho.

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In your answer, provide a separate list of monies derived from I.S.D.A. pulled milk permit sales, the charities receiving said monies, the dairies associated with each donation, and the tax benefit derived by this donation and the name of the person or Company deriving said tax benefit.

ANSWER:

Objection. This interrogatory is over broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. The Protestants have raised no issue in their protests or in the pre-hearing conference which has any bearing whatsoever on the information sought by this interrogatory. Moreover, finding, generating, collecting, or presenting the information would be difficult and unduly burdensome on the Applicant. Finally, the Applicant contends that disclosure of the financial and business information sought by this interrogatory would disclose confidential business information putting the Applicant at a competitive disadvantage.

Item 24 (Interrogatory No. 24)

Please indicate the final destination, beneficial use and name of water right holder of the potable wastewater that is discharged daily into the North Side Canal Company system. In your answer, provide the total yearly number of gallons discharged, the certification testing requirements and the extent of the review extended to alternate uses of this water.

ANSWER:

The Applicant does not possess this information. Moreover, the Applicant objects to this interrogatory is over broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. The Protestants have raised no issue in their protests or in the pre-hearing conference which has any bearing whatsoever on the information sought by this interrogatory. Moreover, finding, generating, collecting, or presenting the information would be difficult and unduly burdensome on the Applicant. Finally, the Applicant contends that disclosure of the financial and business information sought by this interrogatory would disclose confidential business information putting the Applicant at a competitive disadvantage.

Item 25 (Interrogatory No. 25)

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Please describe the major development you have started as referenced in the IDWR memo of December 18, 1998. In your answer, describe how this Transfer is necessary for this development, or not, and how the denial of this Transfer will affect this development.

ANSWER:

The Applicant intends to expand its operation and increase its level of cheese and whey production. However, water is not an input into the production of the cheese and whey products themselves. Rather, water is required at the plant for other purposes, as described in our responses to Chisholm's First Discovery. These other uses are expected to remain relatively constant, despite future increases in cheese and whey production. Consequently, additional water supplies are not required to facilitate the anticipated expansion. Rather, as explained in our responses to Chisholm's First Discovery, the water sought pursuant to the pending application is needed to replace and/or supplement existing supplies and to secure a viable, permanent, reliable, controllable, cost-effective, clean and independent source of water for its industrial use

Item 26 (Interrogatory No. 26)

Please list all alternatives open to you to obtain more water including this transfer. In your answer, include all projected financial comparisons for each option, including this transfer.

ANSWER:

Please see responses to First Chisholm Discovery.

Item 27 (Request for Admission No. 1)

Please admit that this water right was forfeit[ed].

ANSWER:

Denied.

Item 28 (Interrogatory No. 27)

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If your response to Item 27 is anything other than an unqualified admission, please state each and every fact and legal theory, case and statute which you contend supports your claim that this water right is not forfeit.

ANSWER:

Objection. This issue was not raised in the prehearing conference nor in the protest, pleadings, or discovery. Consequently, Applicant objects that the issue cannot be raised at this stage of the proceeding. Notwithstanding such objection and without waiving same, the Applicant states that it has no information suggesting or supporting that a forfeiture has occurred.

Item 29 (Request for Production No. 2)

If your response to Item 27 is anything other than an unqualified admission, please produce any and all documents which bear upon or provide evidence with respect to your proof that this water right is not forfeit.

ANSWER:

None.

Item 30 (Request for Admission No. 2)

Please admit that this Transfer will injure other water rights.

ANSWER:

Denied.

Item 31 (Interrogatory No. 28)

If your response to Item 30 is anything other than an unqualified admission, please state each and every fact which you contend supports your claim that the proposed Transfer will not injure other water rights.

ANSWER:

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Our consultants are now in the process of collecting and analyzing data and preparing their presentations with respect to injury and enlargement. As information and documents become available, they will be made available through supplementation of these responses.

Item 32 (Request for Production No. 3)

If your response to Item 30 is anything other than an unqualified admission, please produce any and all documents which bear upon or provide evidence with respect to your proof that this Transfer will not injure other water rights.

ANSWER:

Same as Answer to Item 31 above.

Item 33 (Request for Admission No. 3)

Please admit that this Transfer will constitute an enlargement in the use of the original right.

ANSWER:

Denied.

Item 34 (Interrogatory No. 29)

If your response to Item 33 is anything other than an unqualified admission, please state each and every fact which you contend supports your claim that the proposed Transfer will not constitute an enlargement in the use of the original right.

ANSWER:

First, applicant contends that enlargement is not an issue in a transfer proceeding in which the original use(s) of the water are ended and entirely new use(s) are substituted. Second, to the extent enlargement is an issue, no enlargement would occur here because there is no increase in the use or application of water. Only the consumptive use component will be transferred.

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Item 35 (Request for Production No. 4)

If your response to Item 30 is anything other than an unqualified admission, please produce any and all documents which bear upon or provide evidence with respect to your proof that this Transfer will not constitute an enlargement of the water right.

ANSWER:

Please see documents produced with Chisholm's First Discovery.

Item 36 (Request for Admission No.4)

Please admit that this Transfer is not in the public interest.

ANSWER:

Denied.

Item 37 (Interrogatory No. 30)

If your response to Item 36 is anything other than an unqualified admission, please state each and every fact with you contend supports your claim that the proposed Transfer is in the public interest.

ANSWER:

Please see responses and documents produced in connection with Chisholm's First Discovery.

Item 38 (Request for Production No. 5)

If your response to Item 36 is anything other than an unqualified admission, please produce any and all documents which bear upon or provide evidence with respect to your proof that this Transfer is in the public interest.

ANSWER:

Please see documents produced in connection with Chisholm's First Discovery.

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Item 39 (Request for Admission No. 5)

Please admit that you see basis to the claim that this Transfer could, under any conditions, be detrimental to the public interest.

ANSWER:

We do not understand the question. If the thrust of the request for admission is that there are no conditions under which approval of the transfer application would be in the public interest, we deny.

Item 40 (Interrogatory No. 31)

If your response to Item 39 is anything other than an unqualified admission, please state each and every fact which you contend supports your claim that the proposed Transfer could not, under any condition, be detrimental to the public interest.

ANSWER:

Please see Answer to Item 39.

Item 41 (Request for Production No. 6)

If your response to Item 39 is anything other than an unqualified admission, please produce any and all documents which bear upon or provide evidence with respect to your proof that this Transfer could not, under any condition, be detrimental to the public interest.

ANSWER:

Please see Answer to Item 39. Also see documents produced in connection with Chisholm's First Discovery.

Item 42 (Request for Admission No. 6)

Please admit that this Transfer is not consistent with the conservation of water resources within the State of Idaho.

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ANSWER:

Denied.

Item 43 (Interrogatory No. 32)

If your response to Item 42 is anything other than an unqualified admission, please state each and every fact which you contend supports your claim that the proposed Transfer is consistent with the conservation of water resources within the State of Idaho.

ANSWER:

Please see responses to Chisholm's First Discovery.

Item 44 (Request for Production No. 7)

If your response to Item 42 is anything other than an unqualified admission, please produce any and all documents which bear upon or provide evidence with respect to your proof that this Transfer is consistent with the conservation of water resources within the State of Idaho.

ANSWER:

Please see prior answers.

Item 45 (Request for Admission No. 7)

Please admit that this Transfer will constitute a consumptive use.

ANSWER:

We are not certain that we understand this question. The proposed use is a consumptive use in the sense that some of the water diverted will be consumed or lost in the course of beneficial use. In this sense, it is no different from virtually any other industrial or agricultural water right.

Item 46 (Interrogatory No. 33)

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If your response to Item 45 is anything other than an unqualified admission, please state each and every fact which you contend supports your claim that the proposed Transfer will not constitute a consumptive use.

ANSWER:

Please see response to Item 45.

Item 47 (Request for Production No. 8)

If your response to Item 45 is anything other than an unqualified admission, please produce any and all documents which bear upon or provide evidence with respect to your proof that this Transfer will not constitute a consumptive use.

ANSWER:

Please see response to Item 45.

Item 48 (Request for Admission No. 8)

Please admit that this Transfer constitutes a change in the nature of use from agricultural to commercial/industrial use.

ANSWER:

Admitted.

Item 49 (Interrogatory No. 34)

If your response to Item 48 is anything other than an unqualified admission, please state each and every fact which you contend supports your claim that the proposed Transfer does not constitute a change in the nature of use from agricultural to commercial/industrial use.

ANSWER:

The proposed change in use to industrial is stated on the application. Also see documents produced in connection with Chisholm's First Discovery.

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Item 50 (Request for Production No. 9)

If your response to Item 48 is anything other than an unqualified admission, please produce any and all documents which bear upon or provide evidence with respect to your proof that this Transfer does not constitute a change in the nature of use from agricultural to commercial/industrial use.

ANSWER:

The proposed change in use to industrial is stated on the application. Also see documents produced in connection with Chisholm's First Discovery.

Item 51 (Request for Admission No.9)

Please admit that you own no water rights.

ANSWER:

Denied.

Item 52 (Interrogatory No. 35)

If your response to Item 51 is anything other than an unqualified admission, please identify each water right you own wherein the water from each right is not physically connected in reality.

ANSWER:

Jerome Cheese has purchased the two water rights which are subject to transfer applications No. 5401 and 5436. As contract documents which have been produced show, full payment is not required until the transfers are approved by the Department. Jerome Cheese owns no other water rights. We do not know what the Protestant means by "wherein the water from each right is not physically connected in reality." If the intent is to inquire whether the proposed new point(s) of diversion (after transfer) will draw from the same aquifer as the original point(s) of diversion (before transfer), the Applicant contends that this is the case.

Item 53 (Request for Production No. 10)

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If your response to Item 51 is anything other than an unqualified admission, please produce any and all documents which bear upon or provide evidence with respect to your proof that the water from each right is not physically connected in reality.

ANSWER:

Please see response to Item No. 52.

Our consultants are now in the process of collecting and analyzing data and preparing their presentations with respect to injury and, in particular, the impact of the change in point of diversion. As information and documents become available, they will be made available through supplementation of these responses.

Item 54 (Request for Admission No. 10)

Please admit that expansion of your Company has the overall effect of increasing the overall consumptive use of groundwater by requiring the need for more dairy cows.

ANSWER:

We are without sufficient information to admit or deny. Consequently, we deny.

Item 55 (Interrogatory No. 36)

If your response to Item 54 is anything other than an unqualified admission, please state each and every fact which you contend supports your claim that the expansion of your Company does not require the need for more dairy cows.

ANSWER:

Please see response to Item 54.

Item 56 (Request for Production No. 11)

If your response to Item 54 is anything other than an unqualified admission, please produce any and all documents which bear upon or provide evidence with respect to your proof that the expansion of your Company does not require the need for more dairy cows.

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ANSWER:

Please see response to Item 54. Also, see documents produced in conjunction with Chisholm's First Discovery.

Item 57 (Request for Admission No. 11)

Please admit that you know the limits of the sustainability or natural cycle or chemical balance of dairy nutrients (manure) and wastewater when land applied, in a cow per acre relationship.

ANSWER:

Denied.

Item 58 (Interrogatory No. 37)

If your response to Item 57 is anything other than an unqualified admission, please state each and every fact which you contend supports your claim that you do not know the limits of the sustainability or natural cycle or chemical balance of dairy nutrients (manure) and wastewater when land applied, in a cow per acre relationship.

ANSWER:

Objection. This interrogatory is ambiguous, over broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Moreover, finding, generating, collecting, or presenting the information would be difficult and unduly burdensome on the Applicant.

Item 59 (Interrogatory No. 38)

If your response to Item 57 is in the negative please state all efforts made by your Company to obtain knowledge, prior to this Discovery, as to these limits and whether you believe these limits should affect your proposed Transfer.

ANSWER:

Objection. This interrogatory is ambiguous, over broad, unduly burdensome, and

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not reasonably calculated to lead to the discovery of admissible evidence. Moreover, finding, generating, collecting, or presenting the information would be difficult and unduly burdensome on the Applicant.

Item 60 (Interrogatory No. 39)

In regards to the limits referenced in Item 57, if it is found by reliable scientific sources, such as U.S.G.S., D.E.Q. or I.S.D.A. that these limits have been exceeded, would you support possible action to have these limits met?

ANSWER:

Objection. This request documents the ulterior motive of the Protestant, which has nothing whatsoever to do with the water right transfer at issue. The Applicant objects to this interrogatory is over broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Moreover, finding, generating, collecting, or presenting the information would be difficult and unduly burdensome on the Applicant. Notwithstanding these objections and without waiving same, Jerome Cheese states that officials and representatives of the Idaho Dairymen's Association, the Idaho Department of Agriculture, and the Idaho Division of Environmental Quality may have information pertaining to this subject, and could be called as witnesses, if necessary and appropriate.

Item 61 (Interrogatory No. 40)

If the action referenced in Item 60 was limited to reducing the number of dairy cows because there is not enough available land for manure application and cost of transporting manure to other available land is prohibitive, would you support this action?

ANSWER:

Objection. This request documents the ulterior motive of the Protestant, which has nothing whatsoever to do with the water right transfer at issue. The Applicant objects to this interrogatory is over broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Moreover, finding, generating, collecting, or presenting the information would be difficult and unduly burdensome on the Applicant. Notwithstanding these objections and without waiving same, Jerome Cheese states that officials and representatives of the Idaho Dairymen's

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Association, the Idaho Department of Agriculture, and the Idaho Division of Environmental Quality may have information pertaining to this subject, and could be called as witnesses, if necessary and appropriate.

Item 62 (Request for Admission No. 12)

Please admit that land application of cow manure and wastewater is polluting the Snake River Plain Aquifer.

ANSWER:

Objection. This request documents the ulterior motive of the Protestant, which has nothing whatsoever to do with the water right transfer at issue. The Applicant objects to this interrogatory is over broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Moreover, finding, generating, collecting, or presenting the information would be difficult and unduly burdensome on the Applicant. Notwithstanding these objections and without waiving same, Jerome Cheese states that officials and representatives of the Idaho Dairymen's Association, the Idaho Department of Agriculture, and the Idaho Division of Environmental Quality may have information pertaining to this subject, and could be called as witnesses, if necessary and appropriate.

Item 63 (Interrogatory No. 41)

If your response to Item 62 is anything other than an unqualified admission, please state each and every fact which you contend supports your claim that land application of cow manure and wastewater is not polluting the Snake River Plain Aquifer.

ANSWER:

Objection. This request documents the ulterior motive of the Protestant, which has nothing whatsoever to do with the water right transfer at issue. The Applicant objects to this interrogatory is over broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Moreover, finding, generating, collecting, or presenting the information would be difficult and unduly burdensome on the Applicant. Notwithstanding these objections and without waiving same, Jerome Cheese states that officials and representatives of the Idaho Dairymen's Association, the Idaho Department of Agriculture, and the Idaho Division of

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Environmental Quality may have information pertaining to this subject, and could be called as witnesses, if necessary and appropriate.

Item 64 (Request for Production No. 12)

If your response to Item 62 is anything other than an unqualified admission, please produce any and all documents which bear upon or provide evidence with respect to your proof that land application of cow manure and wastewater is not polluting the Snake River Plain Aquifer.

ANSWER:

Objection. This request documents the ulterior motive of the Protestant, which has nothing whatsoever to do with the water right transfer at issue. The Applicant objects to this interrogatory is over broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Moreover, finding, generating, collecting, or presenting the information would be difficult and unduly burdensome on the Applicant. Notwithstanding these objections and without waiving same, Jerome Cheese states that officials and representatives of the Idaho Dairymen's Association, the Idaho Department of Agriculture, and the Idaho Division of Environmental Quality may have information pertaining to this subject, and could be called as witnesses, if necessary and appropriate.

Item 65 (Request for Admission No. 13)

Please admit that trends in scientific studies are viable indicators of changing conditions.

ANSWER:

It is admitted that trend data may be "viable indicators" in some instances, depending on the quality of the data, analysis and other factors. The statement is denied to the extent it is offered as a statement of absolute or universal applicability.

Item 66 (Interrogatory No. 42)

If your response to Item 65 is anything other than an unqualified admission, please state each and every fact which you contend supports your claim that trends in scientific

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studies are not viable indicators of changing conditions.

ANSWER:

Please see response to Item 65. The Applicant is unable to make a more detailed response, as the Protestant has not identified which trend or scientific study he has in mind.

Item 67 (Request for Production No. 13)

If your response to Item 65 is anything other than an unqualified admission, please produce any and all documents which bear upon or provide evidence with respect to your proof that trends in scientific studies are not viable indicators of changing conditions.

ANSWER:

Please see response to item 66.

Item 68 (Request for Admission No. 14)

Please admit that you trust the scientific integrity of the United States Geological Survey.

ANSWER:

Denied. Although the Applicant has no reason to doubt the integrity of this governmental body, the statement is too vague and general to enable an unqualified admission. Moreover, the Protestant has failed to identify which study, report, finding, or conclusion of the U.S.G.S. it is speaking of.

Item 69 (Interrogatory No. 43)

If your response to Item 68 is anything other than an unqualified admission, please state each and every fact which you contend supports your claim that the U.S.G.S.'s scientific integrity should be suspect.

ANSWER:

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Applicant has no basis on which to doubt the integrity of the U.S.G.S. That does not mean that the Applicant agrees with every study, report, finding, or conclusion of the U.S.G.S.

Item 70 (Request for Production No. 14)

If your response to Item 68 is anything other than an unqualified admission, please produce any and all documents which bear upon or provide evidence with respect to your proof that the U.S.G.S.'s scientific integrity should be suspect.

ANSWER:

We have no documents to produce in this regard.

Item 71 (Request for Admission No. 15)

Please admit that Jerome Cheese Company maintains an unsafe work environment according to standards set by O.S.H.A.

ANSWER:

Objection. This request is over broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Moreover, finding, generating, collecting, or presenting the information would be difficult and unduly burdensome on the Applicant. Notwithstanding these objections and without waiving same, Jerome Cheese denies the request for admission.

Item 72 (Interrogatory No. 44)

If your response to Item 71 is anything other than an unqualified admission, please state each and every fact which you contend supports your claim that Jerome Cheese maintains a safe work environment according to standards set by O.S.H.A.

ANSWER:

Objection. This request is over broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Moreover, finding, generating, collecting, or presenting the information would be difficult and unduly

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burdensome on the Applicant.

Item 73 (Request for Production No. 15)

If your response to Item 71 is anything other than an unqualified admission, please produce any and all documents which bear upon or provide evidence with respect to your proof that Jerome Cheese maintains a safe work environment according to standards set by O.S.H.A. Please include a list of all violations issued by O.S.H.A.

ANSWER:

Objection. This request is over broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Moreover, finding, generating, collecting, or presenting the information would be difficult and unduly burdensome on the Applicant.

Item 74 (Request for Admission No. 16)

This request is directed specifically to Givens Pursley. Please admit that your firm never uses electronic means [in] conferences, depositions or taking of testimony.

ANSWER:

Objection. Givens Pursley LLP is not a party to this administrative litigation and is not subject to interrogatories or similar discovery. Moreover, the question is not reasonably calculated to lead to the introduction of admissible evidence. Notwithstanding such objections and without waiving same, Givens Pursley LLP denies the request for admission.

Item 75 (Interrogatory No. 45)

If your response to Item 74 is anything other than an unqualified admission, please provide the approximate number of electronically held conferences, depositions or taking of testimony your firm handled in 1998.

Objection. Givens Pursley LLP is not a party to this administrative litigation and is not subject to interrogatories or similar discovery. Moreover, the question is not reasonably calculated to lead to the introduction of admissible evidence. Moreover,

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finding, generating, collecting, or presenting the information would be difficult and unduly burdensome on Givens Pursley LLP. Notwithstanding such objections and without waiving same, Givens Pursley LLP states that it frequently employs electronic means for procedural conferences. It occasionally employs electronic means for oral arguments. It never (to the undersigned counsel's recollection) has employed electronic means for a hearing involving the interrogation of witnesses and the offering of evidence.

Dated this 9th day of June, 1999.

GIVENS PURSLEY LLP

By _____
Christopher H. Meyer

Attorneys for Applicant
Jerome Cheese

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JUL 26 2000

VERIFICATION

J. Rex Minchey, acting under authority of and on behalf of Jerome Cheese, being first duly sworn upon oath, deposes and says:

Jerome Cheese is the Applicant in the above-captioned matter. I serve as Maintenance Manager for Jerome Cheese and am authorized by Jerome Cheese to respond to all discovery in this matter on behalf of Jerome Cheese. I have read the foregoing requests and responses. The statements contained therein are true to the best of my knowledge and belief.

Dated: June 9 1999

J. Rex Minchey
Maintenance Manager
Jerome Cheese

STATE OF IDAHO)
) ss.
COUNTY OF JEROME)

On this 9 day of June, 1999, before me, a Notary Public, personally appeared J. Rex Minchey, known or identified to me to be the Maintenance Manager of Jerome Cheese, whose name is subscribed to the foregoing instrument on behalf of said corporation, and acknowledged to me that s/he is authorized to and did execute the same on behalf of said corporation.

NOTARY PUBLIC for Idaho
Residing at _____, Idaho
My commission expires: 3/13/2003

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JUL 26 2000

CERTIFICATE OF SERVICE

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

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

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

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

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

Christopher H. Meyer

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JUL 26 2000

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

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

June 10, 1999

Lee Halper
331 S 230 W
Jerome, ID 83338

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

Dear Mr. Halper:

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

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

Again, as I advised you in my June 7, 1999 letter, an electronic transmission by E-mail is not the same as an electronic transmission by FAX which is sent in compliance with IDAPA 37.01.01300 (Procedure Rule 300).

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

Sincerely,

L. GLEN SAXTON
Hearing Officer

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

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JUL 26 2000

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

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

TRANSMITTAL COVER SHEET

FAX NUMBER: (208) 327-7866

DATE: 6.10.99

TO: Lee Harper
208-324-4422

FROM: Glen Saxton
IDWR

DOCUMENT DESCRIPTION: Letter - re: Jerome Diversion

COVER SHEET + 1 **PAGES**

CONTACT: Kari Lyon 327-7941 **IF YOU DO NOT RECEIVE ALL THE PAGES**

THANK YOU!

Faxed 6.10.99
10:15 a.m.
Ket

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JUL 26 2000

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

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

TRANSMITTAL COVER SHEET

FAX NUMBER: (208) 327-7866

DATE: 6.10.99

TO: Chris Meyer
388-1300

FROM: Glen Saxton
IDWR

DOCUMENT DESCRIPTION: Letter - re: Jerome Cheese

COVER SHEET + 1 **PAGES**

CONTACT: Kari Lipan
327-7941 **IF YOU DO NOT RECEIVE ALL THE PAGES**

THANK YOU!

Faxed 6.10.99
10:13 a.m.
Ket

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JUL 26 2000

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JUN 0 9 1999
Department of Water Resources

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

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

BEFORE THE
IDAHO DEPARTMENT OF WATER RESOURCES

In the Matter of Application For Transfer No. 5436 (Water Right No. 35-08606) Jerome Cheese, Applicant Bill Chisholm, Lee Halper, Michael Ihler, Darcy Thornborrow, Protestants	**NOTICE OF APPEARANCE**

TO: IDAHO DEPARTMENT OF WATER RESOURCES AND THE PROTESTANTS IN THE ABOVE-CAPTIONED MATTER:

PLEASE take notice that Christopher H. Meyer and Michael C. Creamer of the firm Givens Pursley LLP hereby enter their appearance as attorneys of record for the Applicant, Davisco Foods International, Inc., dba Jerome Cheese, in the above-captioned matter.

Pursuant to Procedure Rule 203 (IDAPA 37.01.01.203), Procedure Rule 302 (IDAPA 37.01.01.302), and Procedure Rule 303 (IDAPA 37.01.01.303), all parties are hereby notified and required to serve any subsequent filings in this matter upon the

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above-named counsel.

DATED this 7th day of June, 1999.

GIVENS PURSLEY LLP

By _____
Christopher H. Meyer

Attorneys for Applicant
Jerome Cheese

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MAR 2 6 2000

CERTIFICATE OF SERVICE

I hereby certify that on June 7, 1999 I caused to be served a true and correct copy of the foregoing to each of the persons named below by the method indicated below each of their names.

Mr. Bill Chisholm
19073 E. Hwy. 30
Buhl, ID 83316
☑ U.S. Mail ☐ Fax ☐ By hand ☐ Overnight

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

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

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

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

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

Christopher H. Meyer

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JUL 26 2000

Young, Norm

From: slvrchst@magiclink.com
Sent: Wednesday, June 09, 1999 2:31 PM
To: Christopher Meyer; bill chisholm; allen merritt; norm young/l.glen saxton
Subject: Re: Please see attached motion

I just talked with bill and he hasn't checked the place where he arranged to get this fax. Also, I got a packet of your answers to Discovery mailed June 8th and addressed to me but these answers are Bill's and not mine. What do want to do now?

Christopher Meyer wrote:

> Thanks. That will make things simpler.
>
> - Chris
>
> >>> <slvrchst@magiclink.com> 06/09/99 10:56AM >>>
> I just talked to Ms. Thornborrow and she said she has signed everything sent to her and returned it. I will
> check with Ihler's and Chisholm tonight as well. She will double check tonight. I am waiting on the Hearing
> Officer to clear up our misunderstanding on the Discovery deadline as per my email to all parties on this subject
> as this also affects your #2 of the AGREEMENT. Once he does that and if no changes to the AGREEMENT are
needed,
> I will sign and mail. Lee
>
> Christopher Meyer wrote:
>
> > I simply told the IDWR that the Protestants had not agreed to
> > the stipulation I sent out on June 4. I then urged the IDWR
> > to issue appropriate orders to get this case (5436) going.
> >
> > - Chris
> >
> > >>> <slvrchst@magiclink.com> 06/09/99 10:00AM >>>
> > I have an old version of WORD so this did not open.
> >
> > Christopher Meyer wrote:
> >
> > > It is also in the mail to you.
> > >
> > > - Chris
> > >
> > > ----------
> > >
> > > Name: 1999-06-09 Motion to Open Discovery.wpd
> > > 1999-06-09 Motion to Open Discovery.wpd Type: WordPerfect Document (application/wordperfect5.1)
> > > Encoding: base64
> > > Description: WordPerfect 6.1

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Young, Norm

From: slvrchst@magiclink.com
Sent: Wednesday, June 09, 1999 3:40 PM
To: norm young/l.glen saxton; chris meyer; darcy & jack thornborrow; bill chisholm; allen merritt; mike ihler
Subject: RESPONSE TO 2ND MOTION/SUBPOENA

Dear Mr. Saxton,
I got your letter of June 7 which let me know that my 2nd Motion to Issue Subpoenas was not in the proper form. I will remedy that. In terms of the Duces Tecum Subpoenas wherein you say:

"There likely are volumes of information which fit within this description and have nothing to do with the protested applications for transfer. I do not plan to receive into evidence proposed exhibits which are not relevant to the proceeding. Hence, in order for the department to further consider the issuance of subpoenas, you need to specifically identify the documents, reports, studies and fact sheets that you are seeking from each party and a detailed reason for the request."

I agree with the first two sentences of this paragraph. However, I disagree with your interpretation of the purpose and scope of the Subpoenas. Subpoenas do not deal with admissibility or relevancy at the subject Hearing, but rather, the Subpoenas simply mandate the presence of the documents. Your point is well taken, there are volumes, and until those volumes are reviewed it is impossible for the Protestants, or anyone, to determine what of those volumes of information is relevant to the instant proceeding. Without the Subpoenas, there is no way to get this voluminous information. What you are creating is a circle logic, which, if followed, would throw the purpose of Subpoenas completely on its head. Your job as Hearing Officer, as you know, is to rule on the relevancy and the admissibility of documents to be placed into the record, not to restrict examination of clearly discoverable information no matter how big the pile of paper. I respectfully request that you reconsider your position on this matter. I will re-issue my motion in the proper format and would request a favorable ruling. Thank you. Lee Halper

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Young, Norm

From: slvrchst@magiclink.com
Sent: Wednesday, June 09, 1999 10:56 AM
To: Christopher Meyer
Subject: Re: Please see attached motion

I just talked to Ms. Thornborrow and she said she has signed everything sent to her and returned it. I will check with Ihler's and Chisholm tonight as well. She will double check tonight. I am waiting on the Hearing Officer to clear up our misunderstanding on the Discovery deadline as per my email to all parties on this subject as this also affects your #2 of the AGREEMENT. Once he does that and if no changes to the AGREEMENT are needed, I will sign and mail. Lee

Christopher Meyer wrote:

> I simply told the IDWR that the Protestants had not agreed to
> the stipulation I sent out on June 4. I then urged the IDWR
> to issue appropriate orders to get this case (5436) going.
>
> - Chris
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>
> > It is also in the mail to you.
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> > - Chris
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> > ----------
> >
> > Name: 1999-06-09 Motion to Open Discovery.wpd
> > 1999-06-09 Motion to Open Discovery.wpd Type: WordPerfect Document (application/wordperfect5.1)
> > Encoding: base64
> > Description: WordPerfect 6.1

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Department of Water Resources

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

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

BEFORE THE
IDAHO DEPARTMENT OF WATER RESOURCES

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

Jerome Cheese,
Applicant

William K. Chisholm,
Lee J. Halper,
Protestants

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

Jerome Cheese,
Applicant

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

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

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

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

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

Dated this 9th day of June, 1999.

GIVENS PURSLEY LLP

By _____
Christopher H. Meyer

Attorneys for Applicant
Jerome Cheese

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JUL 26 2000

CERTIFICATE OF SERVICE

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

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

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

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

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

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

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

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

Christopher H. Meyer

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JUL 26 2000

EXHIBIT A

Letter of June 4, 1999

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JUL 26 2000

FILE COPY

GIVENS PURSLEY LLP

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

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

Gary G. Allen
Christopher J. Beeson
Michael C. Creamer
Thomas E. Dvorak
Roy Lewis Eiguren
Jeffrey C. Fereday
L. W. Grant III
Richard W. Jankowski
Kari T. Klein
David R. Lombardi
Kimberly D. Maloney
Kenneth R. McClure
Cynthia A. Melillo
Christopher H. Meyer
L. Edward Miller
Patrick J. Miller
Judson B. Montgomery
Angela K. Nelson
W. Hugh O'Riordan
Kenneth L. Pursley
Conley Ward
Stephanie C. Westermeier
Robert B. White
Raymond D. Givens
James A. McClure
OF COUNSEL

Via Facsimile

June 4, 1999

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

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

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

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

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

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

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

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

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

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

MICROFILMED
JUL 26 2000

Sincerely,

Christopher H. Meyer
For Jerome Cheese Company

CHM:baf

AGREEMENT

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

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

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

Dated:_____ Sign here:_____

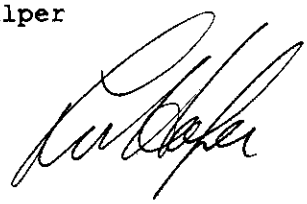
Print name here:_____

MICROFILMED
JUL 26 2000

RECEIVED
JUN 07 1999
Department of Water Resources

Subject: CONSOLIDATION
Date: Wed, 02 Jun 1999 12:37:12 -0600
From: slvrchst@magiclink.com
To: "norm young/l. glen saxton" <nyoung@idwr.state.id.us>, chris meyer <chm@givenspursley.com>, bill chisholm <chisholm@rmci.net>, allen merritt <amerritt@idwr.state.id.us>

Bill is alerting Mr. Ihler and Ms. Thornborrow and will get them to sign or write and send an agreement to this hearing date. I will print and send this via regular mail.
I, Lee Halper, Protestant in the matter of Application for Transfer No. 5401 do agree to consolidate this transfer protest with my protest of Application for Transfer No. 5436 to a hearing date of July 27 and 28 with the understanding that the hearing will have 3 separate parts as follows:
1. issues that involve both transfers
2. issues that involve # 5401 only
3. issues that involve # 5436 only
It is also my understanding that the Department will make a determination on these Applications as separate matters and as such could approve each separately, deny each separately, deny one and approve the other, approve each with conditions, and the other possible combinations.
Dated this June 2, 1999
Lee Halper



MICROFILMED
JUL 26 2000

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

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

June 7, 1999

Lee Halper
331 S 230 W
Jerome, ID 83338

RE: APP. FOR TRANSFER NO. 5401 IN THE NAME OF JEROME CHEESE CO.

Dear Mr. Halper:

On June 3, 1999, I received a message you sent by E-Mail which you have termed a Second Motion to Issue Subpoenas. In the E-Mail message, you generally describe why a subpoena should be issued to each proposed witness. The E-Mail transmission can not be treated as a Motion. IDAPA Rule 37.01.01300 (Procedure Rule 300), however, provides that certain documents can be filed with the department by FAX, if the original is mailed the next working day.

In order for the department to consider a motion in connection with the requested subpoenas, you need to submit a motion as required in the Rules of Procedure. If you make such a submittal, also recognize that you have requested the issuance of Duces Tecum Subpoenas in which you request that the recipients are to bring with them

> "all documents, reports, studies, fact sheets and the like that pertain to the quality and quantity of groundwater and surface water in the Snake Plain Aquifer Region of Idaho."

There likely are volumes of information which fit within this description and have nothing to do with the protested applications for transfer. I do not plan to receive into evidence proposed exhibits which are not relevant to the proceeding. Hence, in order for the department to further consider the issuance of subpoenas, you need to specifically identify the documents, reports, studies and fact sheets that you are seeking from each party and a detailed reason for the request.

Sincerely,

L. GLEN SAXTON
Hearing Officer

c: - Chris Meyer, Michael Ihler
Bill Chisholm, Darcy Thornborrow
Allen Merritt

MICROFILMED
JUL 26 2000

FAX COVER SHEET

DATE: Monday, June 7, 1999

PAGES (INCLUDING COVER): 1

ORIGINAL TO FOLLOW: NO

RE: Jerome Cheese Company
Water Transfer Nos. [redacted] and 5438
Our File No. 5472-1

From:
CHRISTOPHER H. MEYER
GIVENS PURSLEY LLP
Suite 200, Park Place
277 North Sixth Street
Post Office Box 2720
Boise, Idaho 83701-2720
Telephone: 208-388-1236
Fax: 208-388-1300
Email: chm@givenspursley.com

TO:

		Voice	Fax
Allen D. Merritt, P.E.	IDWR	208-736-3033	208-736-3037
Mr. L. Glen Saxton	IDWR	327-7955	327-7866

MESSAGE:

Gentlemen:
In response to Mr. Halper's email alleging that we are not complying with deadlines for discovery, we have repeatedly explained the deadlines to him, including at a conference in this office when Mr. Halper and Mr. Chisholm delivered their discovery responses. I do not understand why Mr. Halper is continuing to have difficulty understanding the fifteen day rule.

In any event, we are finalizing our responses to Mr. Chisholm's discovery today, and expect to complete our responses to Mr. Halper's discovery tomorrow. Both are within the deadlines established.

— Chris

cc: Clients
Consultants
Protestants

RECEIVED
JUN 08 1999
Department of Water Resources
Southern Region

If this fax does not transmit fully or is difficult to read, please contact me or my secretary, Barbara Feasel, at (208) 388-1227.

JUL 26 2000

CONFIDENTIALITY NOTICE
This facsimile may contain confidential information that is protected by the attorney-client or work product privilege. It is intended only for the use of the individual(s) named above. If you are not a named recipient or an employee responsible for delivering the facsimile, you are instructed not to deliver, distribute or copy this facsimile, nor should you disclose its contents or take any action in reliance on the information it contains. If you have received this facsimile in error, please notify us immediately by telephone to arrange for the return of the transmitted documents to us. Thank you.

S:\Clients\5472\1\Fax\CHM Fax to Allen Merritt and Glen Saxton.wpd

RECEIVED
JUN 07 1999
Department of Water Resources

GIVENS PURSLEY LLP

LAW OFFICES
277 North 8th Street, Suite 200
PO Box 2720, Boise, Idaho 83701
TELEPHONE: 208 388-1200
FACSIMILE: 208 388-1300

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

Gary G. Allen
Christopher J. Beeson
Michael C. Creamer
Thomas E. Dvorak
Roy Lewis Eiguren
Jeffrey C. Fereday
L. W. Grant III
Richard W. Jankowski
Kari T. Klein
David R. Lombardi
Kimberly D. Maloney
Kenneth R. McClure
Cynthia A. Melillo
Christopher H. Meyer
L. Edward Miller
Patrick J. Miller
Judson B. Montgomery
Angela K. Nelson
W. Hugh O'Riordan
Kenneth L. Pursley
Conley Ward
Stephanie C. Westermeier
Robert B. White
Raymond D. Givens
James A. McClure
OF COUNSEL

June 3, 1999

Via Facsimile and U.S. Mail

Allen D. Merritt, P.E.
Southern Regional Manager
Idaho Department of Water Resources
1341 Fillmore St., Ste. 200
Twin Falls, ID 83301-3380

Mr. L. Glen Saxton
Hearing Officer
Idaho Department of Water Resources
1301 N. Orchard
Statehouse Mail
Boise, ID 83720-9000

Re: Jerome Cheese Company
Water Transfer Nos. 5401 and 5436
Our File No. 5472-1

Dear Messrs. Merritt and Saxton:

We have reached an agreement among each of the four Protestants and Jerome Cheese Company concerning scheduling of the hearings in these matters. The agreement calls for continuing the hearing currently scheduled for June 8, 1999. Instead, a consolidated hearing would be held for both transfer applications on July 27 and 28, 1999 in Twin Falls.

In addition, the parties have entered two stipulations:

STIPULATION #1: Jerome Cheese Company acknowledges, agrees and stipulates, per request of the Protestants, that the hearing to be reset for July 27 and 28, 1999 is "consolidated" only for purposes of convenience and efficiency. Despite the fact that both transfer applications (Nos. 5401 and 5436) will be heard on the same day, these are separate applications subject to separate and independent consideration and decision by the Department of Water Resources.

STIPULATION #2: Jerome Cheese Company acknowledges that Protestant Darcy Thornborrow will be out of the country and unavailable to attend the consolidated hearing

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JUL 26 2000

on July 27 and 28, 1999. Jerome Cheese Company agrees and stipulates that Ms. Thornborrow may be represented at the hearing by a replacement or representative of her choosing. Ms. Thornborrow's replacement or representative is not required to be an attorney, but may be any person she selects. The person selected may serve either as a representative for Ms. Thornborrow or as a substitute Protestant. Jerome Cheese waives any objection to this arrangement.

Sincerely,

Christopher H. Meyer

Enclosures:

Copies of four letters each countersigned by one of the four Protestants agreeing to the consolidation as described.

cc: Charles E. Brockway, Brockway Engineering
William K. Chisholm, Protestant
Michael C. Creamer, Givens Pursley
Jon Davis, Jerome Cheese Company
Lee J. Halper, Protestant
Craig D. Hobdey, Hobdey & Hobdey
Paul K. Hunter, EnviroSearch International
Michael Ihler, Protestant
Richard K. Kelsey, EnviroSearch International
J. Rex Minchey, Jerome Cheese Company
Darcy Thornborrow, Protestant

CHM:baf
S:\Clients\5472\1\Corr\1999-06-03 CHM Ltr to G.Saxton & A.Merritt - Re consolidation agreement.wpd

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JUL 26 2000

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JUN 0 7 1999
Department of Water Resources

GIVENS PURSLEY LLP

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

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

Barry G. Alan
Christopher J. Beeson
Michael C. Creamer
Thomas E. Dvorak
Amy Lewis Gipson
Arthur C. Handley
L. W. Grant III
Richard W. Jodoin(not admitted)
Scott T. Klein
David R. Lombardi
Kimberly D. Maloney
Kenneth R. McClure
Cynthia A. Moeller
Christopher M. Meyer
L. Edwards Miller
Preston J. Miller
Judson B. Montgomery
Angela E. Nelson
W. Hugh O'Riordan
Kenneth L. Pursley
Conley Ward
Stephanie C. Westermeier
Robert B. White
Raymond D. Givens
James A. McClure
(of counsel)

Via Facsimile

June 2, 1999

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

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

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

Darcy Thornborrow
1676 East 3800 North
Buhl, ID 83316

RECEIVED
JUN 0 2 1999
Givens Pursley, LLP

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

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

I am writing to confirm our agreement to postpone the hearing in Water Right Transfer No. 5401 currently set for next Tuesday, June 8, 1999, and to consolidate the hearings on Transfer Nos. 5401 and 5436 to a single hearing to be conducted on July 27 and 28, 1999 in Twin Falls, Idaho.

At the July 27 and 28 hearing, testimony and evidence would be received on both water rights transfers. Some evidence would relate to just one or the other transfer. Some would serve in both matters. This will eliminate duplication of effort.

It is understood that the agreement to postpone the June 8, 1999 hearing is premised on the ability to conduct both hearings in July and that the parties will be bound by this.

If this is consistent with your understanding, please sign below and return to me via fax machine.

I concur with the stipulation that while the hearing is consolidated the decisions are still separate etc

MICROFILMED
JUL 2 6 2000

Sincerely,

Christopher H. Meyer
For Jerome Cheese Company

CHM:baf

AGREEMENT

I have read the letter above, and agree to the rescheduling as described.

Dated: June 2, 1999 Sign here: William K Chisholm

S:\Clients\5472\1\Corr\1999-06-02 CHM Ltr to Pressmans - Re stipulation to reschedule.wpd

Print name here: William K. Chisholm

MICROFILMED
JUL 26 2000

Sincerely,

Christopher H. Meyer
For Jerome Cheese Company

CHM:baf

AGREEMENT

I have read the letter above, and agree to the rescheduling as described.

Dated: 6-2-99 Sign here: Michael W Ihler

S:\Clients\5472\1\Corr\1999-06-02 CHM Ltr to Protestants - Re stipulation to reschedule.wpd

Print name here: Michael W Ihler

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JUN 02 1999
Givens Pursley, LLP

MICROFILMED
JUL 26 2000

Mr. William K. Chisholm
Mr. Lee J. Halper
Mr. Michael Ihler
Ms. Darcy Thornborrow
June 3, 1999
Page 2

Post-it® Fax Note 7671	Date 6/3/99	# of pages ▶ 1
To Barbara	From	
Co./Dept.	Co.	
Phone # 1300	Phone #	
Fax # 208-388-1282	Fax # 208-736-4712	

Christopher H. Meyer
For Jerome Cheese Company

CHM:baf

AGREEMENT

I have read the letter above, and agree to the rescheduling as described.

Dated: 6/3/99 Sign here: D M Thornborrow

S:\Clients\5472\1\Corr\1999-06-03 CHM Ltr to Protestants - Re stipulation to reschedule.wpd

Print name here: D. M. Thornborrow

RECEIVED
JUN 03 1999
Givens Pursley, LLP

MICROFILMED
JUL 26 2000

From: <slvrchst@magiclink.com>
To: "norm young/l. glen saxton" <nyoung@idwr.state.id.us>, chris meyer <chm@givenspursley.com>, bill chisholm <chisholm@rmci.net>, allen merritt <amerritt@idwr.state.id.us>
Date: 6/2/99 12:45PM
Subject: CONSOLIDATION

Bill is alerting Mr. Ihler and Ms. Thornborrow and will get them to sign or write and send an agreement to this hearing date. I will print and send this via regular mail.

I, Lee Halper, Protestant in the matter of Application for Transfer No. 5401 do agree to consolidate this transfer protest with my protest of Application for Transfer No. 5436 to a hearing date of July 27 and 28 with the understanding that the hearing will have 3 separate parts as follows:

1. issues that involve both transfers
2. issues that involve # 5401 only
3. issues that involve # 5436 only

It is also my understanding that the Department will make a determination on these Applications as separate matters and as such could approve each separately, deny each separately, deny one and approve the other, approve each with conditions, and the other possible combinations.

Dated this June 2, 1999
Lee Halper

MICROFILMED

JUL 2 6 2000

Young, Norm

From: slvrchst@magiclink.com
Sent: Sunday, June 06, 1999 7:01 PM
To: norm young/L. GLEN SAXTON; chris meyer; bill chisholm; allen merritt
Subject: ORDERS

Dear Mr. Saxton,
Chris Meyer and I had a disagreement that I would hope you will straighten out.
Bill Chisholm and I hand delivered our Responses to Discovery to Chris on June 1 as stated in your Order which said this must be done 7 days before the hearing. He told us ours wouldn't be delivered until 15 days plus 3 days mailing from the day our Discovery Requests were sent which would mean June 8 for Bill's and June 10th for mine. I said Civil Procedure didn't apply because the Department super cedes in this matter which has a short time frame and 7 days before the hearing means June 1 for both parties. Chris pointed out, after we all agreed to consolidation, that the matter is moot, but I contend that your Order applied until you issued the official change in hearing date. I think Chris and I need a clarification as to what applies in these hearings. Is it Civil Procedure and/or your Order, or just your Order? I think a firm date for issuing and receiving Discovery should be set by you so there is no more misunderstandings like this. If this is my misunderstanding, please straighten me out. Thank you for your help.
Lee Halper

MICROFILMED
JUL 26 2000

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098
Phone: (208)327-7900 FAX: (208)327-7866 www.idwr.state.id.us/idwr/idwrhome.htm

DIRK KEMPTHORNE
Governor
KARL J. DREHER
Director

FAX TRANSMITTAL COVER SHEET

DATE: 6-4-99

TO: Lee Helper **FROM:** Glen Saxton

DOCUMENT DESCRIPTION: Rescheduled Hearing Notice

COMMENTS:

COVER SHEET + 2 **PAGES**

PLEASE CONTACT Julie - 327-7953
IF YOU DO NOT RECEIVE THIS ENTIRE DOCUMENT

MICROFILMED
JUL 26 2000

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

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

June 4, 1999

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

Dear Interested Party:

I have enclosed a copy of the Notice of Rescheduled Hearing, issued in connection with above referenced transfer application.

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

Sincerely,

Julie L. Yarbrough

JULIE L. YARBROUGH, Administrative Assistant
Water Allocation Bureau

Enclosure

c: Allen Merritt - IDWR Southern

MICROFILMED
JUL 2 5 2000

State of Idaho
DEPARTMENT OF WATER RESOURCES
1341 Fillmore Street, Suite 200, Twin Falls, ID 83301-3380
Phone: (208) 736-3033 FAX: (208) 736-3037

SOUTHERN REGION

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

June 4, 1999

ATTN SANDI STANDLEY
OBENCHAIN COMMUNITY ROOM
264 MAIN AVE SOUTH
TWIN FALLS ID 83301

Dear Sandi:

This letter is to confirm the reservation of the Obenchain Main Avenue Community Room for Tuesday & Wednesday on **July 27 and July 28, 1999** from 8:00 a.m.-5:00 p.m.

If you have any questions please feel free to contact me or Allen Merritt, the Southern Regional Office Manager.

Thank you very much for your assistance in this matter.

Very truly yours,

Mary Baldwin
Administrative Assistant

MICROFILMED
JUL 26 2000

GIVENS PURSLEY LLP

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

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

Gary G. Allen
Christopher J. Beeson
Michael C. Creamer
Thomas E. Dvorak
Roy Lewis Eiguren
Jeffrey C. Fereday
L. W. Grant III
Richard W. Jankowski
Karl T. Klein
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Judson B. Montgomery
Angela K. Nelson
W. Hugh O'Riordan
Kenneth L. Pursley
Conley Ward
Stephanie C. Westermeier
Robert B. White
Raymond D. Givens
James A. McClure
OF COUNSEL

June 3, 1999

RECEIVED
JUN 07 1999
Department of Water Resources
Southern Region

Via Facsimile and U.S. Mail

Allen D. Merritt, P.E.
Southern Regional Manager
Idaho Department of Water Resources
1341 Fillmore St., Ste. 200
Twin Falls, ID 83301-3380

Mr. L. Glen Saxton
Hearing Officer
Idaho Department of Water Resources
1301 N. Orchard
Statehouse Mail
Boise, ID 83720-9000

Re: Jerome Cheese Company
Water Transfer Nos. 5401 and 5436
Our File No. 5472-1

Dear Messrs. Merritt and Saxton:

We have reached an agreement among each of the four Protestants and Jerome Cheese Company concerning scheduling of the hearings in these matters. The agreement calls for continuing the hearing currently scheduled for June 8, 1999. Instead, a consolidated hearing would be held for both transfer applications on July 27 and 28, 1999 in Twin Falls.

In addition, the parties have entered two stipulations:

STIPULATION #1: Jerome Cheese Company acknowledges, agrees and stipulates, per request of the Protestants, that the hearing to be reset for July 27 and 28, 1999 is "consolidated" only for purposes of convenience and efficiency. Despite the fact that both transfer applications (Nos. 5401 and 5436) will be heard on the same day, these are separate applications subject to separate and independent consideration and decision by the Department of Water Resources.

STIPULATION #2: Jerome Cheese Company acknowledges that Protestant Darcy Thornborrow will be out of the country and unavailable to attend the consolidated hearing

MICROFILMED
JUL 26 2000

on July 27 and 28, 1999. Jerome Cheese Company agrees and stipulates that Ms. Thornborrow may be represented at the hearing by a replacement or representative of her choosing. Ms. Thornborrow's replacement or representative is not required to be an attorney, but may be any person she selects. The person selected may serve either as a representative for Ms. Thornborrow or as a substitute Protestant. Jerome Cheese waives any objection to this arrangement.

Sincerely,

Christopher H. Meyer

Enclosures:

Copies of four letters each countersigned by one of the four Protestants agreeing to the consolidation as described.

cc: Charles E. Brockway, Brockway Engineering
William K. Chisholm, Protestant
Michael C. Creamer, Givens Pursley
Jon Davis, Jerome Cheese Company
Lee J. Halper, Protestant
Craig D. Hobdey, Hobdey & Hobdey
Paul K. Hunter, EnviroSearch International
Michael Ihler, Protestant
Richard K. Kelsey, EnviroSearch International
J. Rex Minchey, Jerome Cheese Company
Darcy Thornborrow, Protestant

CHM:baf
S:\Clients\5472\1\Corr\1999-06-03 CHM Ltr to G.Saxton & A.Merritt - Re consolidation agreement.wpd

MICROFILMED
JUL 26 2000

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

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

RECEIVED
JUN 03 1999
Department of Water Resources
Southern Region

BEFORE THE
IDAHO DEPARTMENT OF WATER RESOURCES

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

Jerome Cheese Company,
Applicant

William K. Chisholm,
Lee J. Halper,
Protestants

APPLICANT JEROME CHEESE COMPANY'S SECOND SUPPLEMENTAL DISCLOSURE OF WITNESSES

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

I. WITNESSES

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

Bill Riebesell
Plant Superintendent
Jerome Cheese Company.

MICROFILMED
JUL 26 2000

RECEIVED
JUN 0 3 1999
Department of Water Resources
Southern Region

Dated this 1st day of June, 1999.

GIVENS PURSLEY LLP

By _____
Christopher H. Meyer

Attorneys for Applicant
Jerome Cheese Company

RECEIVED
JUN 0 3 1999
Department of Water Resources
Southern Region

CERTIFICATE OF SERVICE

I hereby certify that on June 1, 1999 I caused to be served a true and correct copy of the foregoing to each of the persons named below by the method indicated below each of their names.

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

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

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

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

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

Christopher H. Meyer

MICROFILMED
JUL 2 6 2000

Merritt, Allen

From: slvrchst@magiclink.com
Sent: Wednesday, June 02, 1999 9:04 AM
To: norm young/l. glen saxton; chris meyer; bill chisholm; allen merritt
Subject: second motion to issue subpoenas

BEFORE THE IDAHO DEPARTMENT OF WATER RESOURCES

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

Jerome Cheese Company,
Applicant

William K. Chisholm,
Lee J. Halper,
Protestants

COMES NOW Protestant Lee Halper and issues his Second Motion to Issue Subpoenas.

On June 1, 1999 Protestant hand delivered prepared for signature Subpoenas to the Department wherein he found for the first time that his Motion to Issue Subpoenas had been denied for stated reasons. Protestant seeks to remedy those stated reasons through this Second Motion by identifying reasons each Witness must be Subpoenaed, their relevant knowledge and testimony to be elicited.
Generally, all issues of 42-222 can be adequately addressed by all these witnesses to some degree. As to the issue of a one day hearing, I have no control over the length or scheduling of this..

John Sandy. He is the original holder of the proposed water right to be transferred. His listing as a Witness on Applicant's list does not mean he will appear and his testimony as to certain allegations made by Applicant are critical to those allegations that appear in the Contractual agreement between these two parties.
Laird Noh. His knowledge of the history and the responsibilities of the Legislature and IDWR in matters such as this is without equal and can impart great meaning to the 'public interest' aspect of this protest.
Sonny Buhider. PhD in Chemistry and has a long history of experience with water quality and impacts of influences and is an 'expert' witness. As he works for DEQ, a subpoena is required to not taint the Department's reputation with possible bias allegations. (This also applies to all other listed Government employees regardless of the Department).
Mike McMasters. Long time head field man in Twin Falls DEQ and his wide range of experience and knowledge of local history makes him an 'expert' witness.
Mike Echeverri. Also Twin Falls DEQ with his own area of water quality expertise.
Brad Gilmore. Twin Falls City Environmental Engineer. As he coordinates municipal duties with State Agencies such as DEQ, his knowledge as an expert covers this field of experience.
Marv Patten. Chief of the Dairy Bureau of I.S.D.A. and as part of the 'public interest' issue involved in this protest has to do with dairies, his knowledge of this is vital to this concern.
Lewis Eilers. As head lobbyist for the Dairy Industry, his knowledge overlaps that of Mr. Pattens and completes the picture of the Dairy

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Industry.
Jim Stanton. His confirmation of a written report and the resulting history and outcome of that history is necessary for first hand confirmation of Department action on this water right.
Donna West. As DEQ's water quality specialist, her testimony as to the responsibilities, funding, trends, future policies, etc. are vital to 'public interest' issues.
Stan Clark. Though I have tried to discover through letters and emails what the Governor's policies and future projections for water policies are, I have not been responded to and the Chief Representative of the People's water policies are of utmost importance to the future of our State.
Mike Mitchell. As chief engineer for ISDA, his knowledge and experience in the practical matters that concern the 'nuts and bolts' of the dairy industry is essential for his expertise and the public interest issues.
Kenneth Neely and Janet Crockett. As IDWR water experts, their testimony to explain IDWR studies and reports is essential to the public interest aspect of this protest.
Al Lance. As Attorney General, his opinion on applicable State Law and interpretations are necessary to show problems with certain statutes and the public interest aspect of this protest.
Scott Bybee. His work with the City of Jerome gives close local experience with the affected Municipality and the history involved.
Marj Schmidt. Jerome City Councilwoman whose long time experience with the City and the Applicant will shed practical and political light on public interest issues.

I apologize for my inexperience in these matters and for my 'shotgun' approach used before. Please note I have pared my list to people I think absolutely essential to my Protest.

For these reasons I respectfully request the Department sign and issue Subpoenas for the above named parties for the scheduled June 8, 1999 hearing at 9:00 AM at the Obenchain Building in Twin Falls, Idaho.

Dated June 2, 1999
Lee Halper

CERTIFICATE OF SERVICE

I hereby certify that on June 2, 1999 I caused to be served a true and correct copy of the foregoing to each of the persons named below by the method indicated below each of their names.

Mr. William K. Chisholm
19073 E. Hwy. 30
Buhl, ID 83316
email: chisholm@rmci.net
X Email

Allen D. Merritt, P.E.
Southern Regional Manager
Idaho Department of Water Resources
1341 Fillmore St., Ste. 200
Twin Falls, ID 83301-3380
X Email

Mr. L. Glen Saxton

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Idaho Department of Water Resources
1301 N. Orchard
Statehouse Mail
Boise, ID 83720-9000
X Email

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Department of Water Resources

ORIGINAL

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

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

BEFORE THE
IDAHO DEPARTMENT OF WATER RESOURCES

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

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

I. WITNESSES

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

Bill Riebesell
Plant Superintendent
Jerome Cheese Company.

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Dated this 1st day of June, 1999.

GIVENS PURSLEY LLP

By _____
Christopher H. Meyer

Attorneys for Applicant
Jerome Cheese Company

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CERTIFICATE OF SERVICE

I hereby certify that on June 1, 1999 I caused to be served a true and correct copy of the foregoing to each of the persons named below by the method indicated below each of their names.

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

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

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

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

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

Christopher H. Meyer

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

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

June 2, 1999

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

Dear Interested Party:

I have enclosed a copy of the Order Denying Motion to Reset Hearing Time, issued in connection with above referenced transfer application.

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

Sincerely,

Julie L. Yarbrough

JULIE L. YARBROUGH, Senior Secretary
Water Allocation Bureau

Enclosure

c: Allen Merritt - IDWR Southern

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May 28, 1999

Mr. L. Glen Saxton
Idaho Department of Water Resources
P.O. Box 83720
Boise, ID 83720-0098

Dear Mr. Saxton:

You will hear from a number of recognized experts supporting the Jerome Cheese water transfer and how there will not be a negative impact associated with it. Please accept this letter as my personal support of the proposed Jerome Cheese Company water transfer application. As Mayor of the City of Jerome and as a part time Jerome Cheese employee, I can list many positive impacts that Jerome Cheese has on this community.

The most critical issue we face is sustainable economic strength and growth. Jerome Cheese Company has contributed to the overall well being of this entire community. Approval of the water transfer will work well for the City of Jerome as well as for South Central Idaho.

Sincerely,

Dennis Moore

Dennis Moore

cc: Christhopher H. Meyer
Rex Minchey

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William K. Chisholm
19073E Hwy 30
Buhl, ID 83316
208-543-4418
chisholm@rmci.net

BEFORE THE
IDAHO DEPARTMENT OF WATER RESOURCES

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

William K. Chisholm, Protestant Jerome Cheese Co., Applicant	) Protestant William K. Chisholm's First) Response to Applicant's First Corrected Set) of Interrogatories, Requests for Admissions) and Requests for Production of Documents)))

COMES NOW William K. Chisholm and Responds to Applicant's First Corrected Set of Interrogatories, Requests for Admission and Requests for Production of Documents..

I, William K. Chisholm, do hereby voice my Objection to a number of these questions as being irrelevant. There is no requirement of proof on my part. Beyond raising serious questions with regard to this water transfer and setting the arguments in the public interest there is no burden of proof requirement resting on me. It is the Applicant's burden to provide proof of issues 1,2 and 4 of the Departments rules as set forth in 42-222 as well as the majority of the proof of the possible public interest issues.
I will answer as "irrelevant" those questions of which I have no obligation of proof, however to add clarity to the issues before the Department I will, when appropriate comment on the issues I believe are at stake.

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Follows are the Protestant's responses:

Item 1. Interrogatory No. 1
Please identify yourself (the person responding to these discovery requests), and identify each and every person with whom you consulted in preparing these responses.

Response to Item 1. Interrogatory No. 1
William K. Chisholm, As I am unclear as to your definition of consult, and as all answers are my answers without the advice of anyone else there are no further names. If I were to offer the list of people with whom I discuss the issues relevant to this situation the list would be quite long.

Item 2. Interrogatory No. 2
Please state whether you have read and understood the instructions and introductory materials provided above.

Response to Item 2. Interrogatory No. 2
Yes, as well as can be done by a real person.

Item 3. Interrogatory No. 3
Please identify each person known to you or to your attorneys who has or may have knowledge of any fact or expert opinion pertinent or relevant to your Protest of Transfer Application No. 5401. In your answer to this Interrogatory, please include any person who has been retained, hired, or relied upon by you, your agents, or your representatives to review any issues raised by the Application or your Protest to the Application. In your answer, please provide the full name, mailing address, physical address, and phone number of each person identified.

Response to Item 3. Interrogatory No. 3. As the burden of proof as to items 1,2 and 4 are on the applicant I offer no lists for those. As to item 3, Local Public Interest I would offer that list which has been submitted to the Applicant as possible witnesses.

Item 4. Interrogatory No. 4.
Do you contend that the Application for Transfer 5401 cannot be approved under any conditions?

Response to Item 4. Interrogatory No. 4.
No, but it would of course take proof of conditions 1, 2 and 4 and some responsible action with regard to item 3 that would help to resolve a very serious issue which the Applicant shares some responsibility as a contributing force and beneficiary of the problem

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Item 5. Interrogatory No. 5.
If your answer to the previous interrogatory is anything other than an unqualified "yes" please state each and every condition you contend must be required by the Department as part of approval of the Application.

Response to Item 5. Interrogatory No. 5
As I stated in Item 4, I believe the Applicant has to prove items 1,2 and 4, and that the Applicant has to become a major player in resolving the issues that surround the industrial dairies which are the Applicant's suppliers and exist in part to fill the Applicant's need for product and that the Applicant then shares in the social responsibility for the problems they create.

Item 6. Request for Admission No. 1
Please admit that you own no water rights.

Response to Item 6. Request for Admission No. 1
Irrelevant, though I do own water rights

Item 7. Request for Admission No. 2
Please admit that you own no water rights which will be injured or otherwise impaired by the proposed Transfer No. 5401.

Response to Item 7. Request for Admission No. 2.
Irrelevant, as the Applicant has the responsibility of proof to injure no water rights whether I own or not.

Item 8. Interrogatory No. 6
If your response to Item 7 was anything other than an unqualified admission, please identify each water right you own.

Response to Item 8. Interrogatory No. 6
As a citizen of the State of Idaho, and of the United States, I share ownership in all water rights owned by those legal entities.

Item 9. Interrogatory No. 7.
With respect to each water right identified in response to Item 8 above, please state each and every factual basis by which you contend such water right may be injured by the proposed transfer.

Response to Item 9. Interrogatory No. 7
Irrelevant, under the rules, it is the Applicant's burden to prove no harm. As an advisory comment I will say that there needs to be proof that the water to be transferred from its current location to the proposed transfer sight is the same water.

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Item 10. Request for Production No. 1
If your response to Item 7 was anything other than an unqualified admission, please produce any and all documents which bear upon or provide evidence of potential injury to your water right(s).

Response to Item 10. Request for Production No. 1
Irrelevant as that burden of proof as to no injury to all water rights is on the Applicant

Item 11. Request for Admission No. 3
Please admit that proposed Transfer 5401 calls for the transfer only of that quantity of water which corresponds to the consumptive use component of the water right which is the subject of Transfer No. 5401.

Response to Item 11. Request for Admission No. 3
Irrelevant, again that is the responsibility of the Applicant to prove, however historically the Department of Water Resources does not meter and/or monitor water use once a well is permitted so there is no way to assure the truth to the consumptive use of these transfer.

Item 12. Interrogatory No. 8
If your response to Item 11 was anything other than an unqualified admission, please explain in full your understanding of the quantity of water which is sought to be transferred, explain how this differs from the quantity of the consumptive use component of this right. State each and every fact which you contend supports these conclusions.

Response to Item 12. Interrogatory No. 8.
See Response to Item 11.

Item 13. Request for Production No. 2
If your response to Item 11 was anything other than an unqualified admission, please produce any and all documents which bear upon or provide evidence with respect to the quantity of water sought to be transferred or the measure of consumptive use.

Response to Item 13. Request for Production No. 2
The moratorium on the drilling of new commercial wells exists for a reason. Our water supply is limited and is believed to already be over appropriated. Water transfers for commercial wells, primarily to industrial dairies has not been monitored by IDWR and there is no reason at this time to believe that the Department has the ability to assure that this water transfer will be handled any differently

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Item 14. Request for Admission No. 4.
Please admit that the proposed change in point of diversion contemplated under Transfer No. 5401 will have no adverse impact on any water rights you own.

Response to Item 14. Request for Admission No. 4.
Irrelevant, that burden is on the Applicant.

Item 15. Request for Admission No. 5
Please admit that the proposed change in point of diversion contemplated under Transfer No. 5401 will have no adverse impact on any other person's water rights.

Response to Item 15. Request for Admission No. 5
Irrelevant, the burden of Proof lies with the Applicant

Item 16. Interrogatory No. 9
If your response to either Item 14 or Item 15 was anything other than an unqualified admission, please identify each and every water right which may be injured or other wise impaired by the proposed change in point of diversion.

Response to Item 16. Interrogatory No. 9
All water rights that are physically adjacent at both the point of transfer with regard to recharge and the proposed point of diversion with regard to year round pumping

Item 17. Request for Production No. 3
If your response to either Item 14 or Item 15 was anything other than an unqualified admission, please produce any and all documents which bear upon or provide evidence with respect to the impact of change in point of diversion on your water rights or any other water rights.

Response to Item 17. Request for Production No. 3
Irrelevant, burden of proof is on the Applicant to show no harm.

Item 18. Request for Admission No. 6.
Please admit that the proposed change in season of use contemplated under Transfer No. 5401 will have no adverse impact on any water rights you own.

Response to Item 18. Request for Admission No. 6
Irrelevant, burden of proof is on Applicant to show no adverse impacts on any water rights whether I own them or not

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Item 19. Request for Admission No. 7
Please admit that the proposed change in season of use contemplated under Transfer No. 5401 will have no adverse impact on any other person's water rights.

Response to Item 19. Request for Admission No. 7.
Irrelevant I don't know that to be true, burden of proof is on Applicant

Item 20. Interrogatory No. 10.
If your response to either Item 18 or Item 19 was anything other than an unqualified admission, please identify each and every water right which may be injured or otherwise impaired by the proposed change in season of use.

Response to Item 20. Interrogatory No. 10.
Irrelevant as the burden of proof is on the Applicant, but the issues revolve around the change of use at both the present use and the proposed point of diversion and thus all water rights in the affected areas

Item 21. Request for Production No. 4.
If your response to either Item 18 or Item 19 was anything other than an unqualified admission, please produce any and all documents which bear upon or provide evidence with respect to the impact of change in season of use on your water rights or any other water rights.

Response to Item 21. Request for Production No. 4.
Irrelevant, again, the burden of proof lies with the Applicant to show no impact with regard to change in season of use.

Item 22. Admission by Applicant-No Response Required) Applicant Jerome Cheese Company hereby admits that its application for Transfer No. 5401 is made subject to a dry up condition whereby the land currently/previously irrigated with water sought to be transferred shall be subject to a condition that, after the transfer, it shall no longer be irrigated pursuant to the transferred portion of the former water right.

Response to Item 22. There are serious issues with regard to the drying up of land, as in some counties the protection of agricultural land is part of the Comprehensive Plan, the recharge issues of taking ag land out of irrigation and the plan for that land after drying up is of concern.

Item 23. Request for Admission No. 8.
Please admit that, in light of the above admission (Item 22), and all other circumstances known to you, there is no basis on which to assert that the proposed Transfer No. 5401 will injure any other water right.

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Response to Item 23. Request for Admission No. 8.
Irrelevant once again, the burden of proof is upon the Applicant to show no injury will occur to any other water right.

Item 24. Interrogatory No. 11
If your response to Item 23 was anything other than an unqualified admission, please identify each and every water right which will be injured by the proposed transfer.

Response to Item 24. Interrogatory No. 11.
It is the duty of the Department to assure that no water rights are injured by this action and the burden of proof of this lies with the Applicant, however if land is to be dried up, one needs to look at any water rights that may be affected by any recharge benefit that may have been previously derived from that land being irrigated and subsequent water rights issued.

Item 25. Interrogatory No. 12.
If your response to Item 23 was anything other than an unqualified admission, please state each and every fact which you contend supports your claim that the proposed Transfer 5401 will injure any other water right.

Response to Item 25. Interrogatory No. 12.
See Response to Item 24.

Item 26. Request for Production No. 5
If your response to Item 23 was anything other than an unqualified admission, please produce any and all documents which bear upon or provide evidence with respect to the potential for injury to any other water right.

Response to Item 26. Request for Production No. 5.
Irrelevant, that burden of proof as to injury lies With the Applicant

Item 27. Request for Admission No. 9.
Please admit that, in light of the above admission (Item 22), and all other circumstances known to you, there is no basis on which to assert that the proposed Transfer No. 5401 will constitute an enlargement of the water right.

Response to Item 27. Request for Admission No. 9.
Irrelevant, that burden of proof lies with the Applicant

Item 28. Interrogatory No. 13.
If your response to Item 27 was anything other than an unqualified admission, please state each and every fact which you contend supports your

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claim that the proposed Transfer 5401 may constitute an enlargement of the water right.

Response to Item 28. Interrogatory No. 13.
See Response to Item 27.

Item 29. Request for Production No. 6.
If your response to Item 27 was anything other than an unqualified admission, please produce any and all documents which bear upon or provide evidence with respect to the potential enlargement of the water right.

Response to Item 29. Request for Production No. 6.
See Response to Item 28.

Item 30. Request for Admission No. 10.
Please admit that, in light of the above admission (Item 22), and all other circumstances known to you, there is no basis on which to assert that the proposed Transfer No. 5401 is inconsistent with the conservation of water.

Response to Item 30. Request for Admission No. 10.
The burden of proof with regard to this issue rests with the Applicant, but the question rests upon the recharge issue.

Item 31. Interrogatory No. 14.
If your response to Item 30 was anything other than an unqualified admission, please state each and every fact which you contend supports your claim that the proposed Transfer 5401 is inconsistent with the conservation of water.

Response to Item 31. Interrogatory No. 14.
See Response to Item 30.

Item 32. Request for Production No. 7.
If your response to Item 30 was anything other than an unqualified admission, please produce any and all documents which bear upon or provide evidence with respect to the
impact of proposed Transfer No. 5401 on the conservation of water.

Response to Item 32. Request for Production No. 7.
See Response to Item 31.

Item 33. Request for Admission No. 11.
Please admit that, in light of all circumstances known to you, there is no basis on which to assert that the proposed Transfer No. 5401 is not in the local public interest.

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Response to Item 33. Request for Admission No. 11.
I must deny that assertion.

Item 34. Interrogatory No. 15.
To the extent your response to Item 33 is anything other than an unqualified admission, please: A. State each and every aspect of the local public interest that you contend would be adversely affected by the Application;
B. Identify each and every theory, claim, fact or defense upon which you contend the approval of the Application would not be in the local public interest.

Response to Item 34. Interrogatory No. 15.
A. The "local public interest" includes environmental, social, economic, ethical, safety, health and general welfare. B. Jerome Cheese Co. was recruited to the area under the broad scope of "economic development" which increased the size of the dairy industry in the Magic Valley. Jerome Cheese Co. benefits economically from this expanded "dairy industry" and thus shares in the responsibility of the social, economic, environmental, ethical, health, safety and general welfare costs associated with it. Jerome Cheese Co. as one of the major industrial markets for an expanding dairy industry shares in the serious problems that expansion burdens the local public interest in. An industry and major market such as Jerome Cheese Co. cannot be excused from the social responsibilities it shares for creating the negative scenario created by its suppliers.

Item 35. Request for Production No. 8.
If your response to Item 33 was anything other than an unqualified admission, please produce any and all documents which bear upon or provide evidence with respect to the impact of proposed Transfer No. 5401 on the local public interest.

Response to Item 35. Request for Production No. 8.
Proof of these will come in the form of testimony from Public Officials and Private Citizens

Item 36. Request for Admission No. 12.
Please admit that a primary basis for your opposition to this Transfer is your concern about the impact of public policies facilitating or failing to properly regulate confined animal feeding operations on the quality of life in the Magic Valley.

Response to Item 36. Request for Admission No. 12.
Deny.

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Item 37. Request for Admission No. 13.
Please admit that a primary motivation or goal for your filing your Protest is to draw public attention to these concerns (about the impact of public policies facilitating or failing to properly regulate Confined Animal Feeding Operations on the quality of life in the Magic Valley).

Response to Item 37. Request for Admission No. 13.
Deny.

Item 38. Interrogatory No. 16.
If your response to either of the previous two requests for admission was anything other that an unqualified admission, please state in your own words the primary basis, goal, and motivation for your Protest.

Response to Item 38. Interrogatory No. 16.
I approach all issues with the same mindset and that is the overall impact. I am very concerned about the concepts and policies that allow the transfer of commercial water rights by the Department of Water Resources across large physical distances just to meet the needs of economic interests. The impacts of those water rights transfers that need to be proven by the applicant for such a transfer is defined in Section 43-222 Idaho Code. Protests to these water rights transfers especially with regard to Items 1,2 and 4 should not be necessary, but the Department I don't believe adequately enforces those criteria. Item 3 which talks about the "Local Public Interest" falls I believe on the citizens of the area to define and that the impacts to the local public interest move beyond the mere issues of the water itself, to the impacts of the use of that water on the environment, the economy, the local social and ethical base and all issue of health, safety and general welfare. On Item 3 both the Applicant and the Protestant have burdens of proof. I believe there are issues of serious adverse affects on the local public interest related to this transfer. Some of those adverse impacts have to do with IDWR policies, secondary and related impacts and direct impacts that deal with the circumstances which brings the Applicant to apply for this transfer in the first place.

Item 39. Request for Admission No. 14.
Please admit that Jerome Cheese Company does not own any dairy animals in connection with its cheese production operation in the state of Idaho.

Response to Item 39 , Request for Admission No. 14
I have no information with regards to this either way, or whether any owners or investors in Jerome Cheese Co. own dairy cows.

Item 40. Request for Admission No. 15.
Please admit that Jerome Cheese Company is not now nor has in the past been in violation of any federal, state or local environmental regulation, permit or standard in connection with its operation in the state of Idaho.

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Response to Item 40. Request for Admission No. 15.
I am aware that a dossier compiled by the U.S. EPA does exist, but am not at this moment aware of the issues.

Item 41. Interrogatory No. 17.
If your response to Item 40 was anything other than an unqualified admission, please describe each and every violation, or suspected violation, of any federal, state or local environmental regulation, permit or standard by Jerome Cheese Company.

Response to Item 41. Interrogatory No. 17.
That will be forth coming.

Item 42. Request for Production No. 9.
If your response to Item 40 was anything other than an unqualified admission, please produce any and all documents which bear upon or provide evidence of each and every such violation, or suspected violation, of any federal, state or local environmental regulation, permit or standard by Jerome Cheese Company.

Response to Item 42. Request for Production No. 9.
The information is being gathered and will supplemented as available.

Item 43. Request for Admission No. 16.
Please admit that Jerome Cheese Company contributes substantially and positively to the economy of Jerome, Idaho.

Response to Item 43. Request for Admission No. 16.
To fully assess the economic impacts one must weigh the assets against the liabilities and based on my mode of thinking, I must therefore Deny this admission.

Item 44. Interrogatory No. 18
Please state each and every theory, claim, fact or defense upon which you rely as a basis for your Protest to the Application, which has not been disclosed in response to the above Items.

Response to Item 44. Interrogatory No. 18.
It was stated above in Response to Item 43

Item 45. Interrogatory No. 19.
Please identify every document of which you are aware that supports or tends to support your answers to each of the above interrogatories and requests for admission which has not already been identified or produced.

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Response to Item 45. Interrogatory No. 19.
This is repetitive and needs no response

SWORN this 30th day of May, 1999

_____

William K. Chisholm-Protestant

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on June 1, 1999 I caused to be served a true and correct copy of the foregoing to each of the persons named below by personal delivery to their offices at the address listed by their name.

William K. Chisholm

Christopher H. Meye, Esq.
Michael C. Creamer,Esq
GIVENS PURSLEY LLP
277 N 6th St, Suite 200
P.O. Box 2720
Boise, Idaho 83701-2720

Mr. Karl J. Dreher
Director IDWR
1301 N Orchard St.
Statehouse Mail
Boise, Idaho 83720-9000

L. Glen Saxton
Hearing Officer
Idaho Department of Water Resources
1301 North Orchard St.
Statehouse Mail
Boise, Idaho 83720-9000

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Department of Water Resources

Lee J. Halper
331 S 230 W
Jerome, ID 83338
208-324-2240
208-324-4422 fax

BEFORE THE DIRECTOR

IDAHO DEPARTMENT OF WATER RESOURCES

In the Matter of Application of Jerome Cheese Company For Water Rights Transfer No. 5401 (Water Right No. X36-07337E) Lee Halper, Protestant Jerome Cheese Company, Applicant	Protestant's Objection to Applicant's Motion to Reset Hearing Time

COMES NOW Protestant Lee Halper and enters his Objection to Applicant's Motion to Reset Hearing Time for the following reasons:

1. This hearing date has been known for a reasonable time and no previous Motion was entered. This suggests that Applicant has made another commitment in the interim that he deems more important than the resolution of this Transfer Protest. Such being the case, Applicant should be held to his first commitment, this hearing date.

2. Motion for Continuance was filed by this Protestant and successfully Objected to by the Applicant. If Applicant was aware of the other commitment prior to issuing this Objection, then he asks the Department to grant him special and unequal privilege. If Applicant has only recently been made aware of this conflicting engagement, he has two choices; file for a continuance or be prepared to attend the full and complete hearing.

3. Applicant presumes that Protestants will be able to fully depose this witness in the 4 hours available if this Motion is granted. If the Protestants are not allowed to fully avail themselves of this witness then due process will be denied them by the Department.

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4. The Applicant could have extended the simple courtesy to the Protestants to ask them first if they would have Objection to this rescheduling by a simple phone call. As this was not done, it puts the Department in the unfavorable light in the Protestants eyes if this Motion is granted and unduly affects both the Department and the Protestants against their will.

For these reasons, Protestant requests the Department to Deny Applicant's Motion to Reset Hearing Time.

Dated this 31st day of May, 1999

Lee Halper-Protestant

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Department of Water Resources

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

IDAHO DEPARTMENT OF WATER RESOURCES

In the Matter of Application of Jerome Cheese Company For Water Rights Transfer No. 5401 (Water Right No. X36-07337E), Jerome Cheese Company, Applicant Lee Halper, Protestant	Protestant Lee Halper's Response to Applicant's Objection to Protestant's Motion to Issue Subpoenas

COMES NOW Protestant Lee Halper and Responds to Applicants Objection by addressing and answering each of the issues Applicant brings forth.

1A. Applicant says Protestant "...has failed to describe the nature of the testimony to be elicited..."

Protestant is under no requirement to supply the nature of the testimony to the Applicant. If the Applicant requires the nature of the testimony, he has the ability to depose whatever witness he cares to depose and thereby elicit the nature of the testimony. Further, to require the Protestant to know the full nature of the testimony is to assume that Protestant has powers beyond the realm of normal humans and Protestant has never claimed such.

1B. Applicant says Protestant "...has failed to describe...the need for the witness..."

Protestant has the right to any witness he chooses and to have to prove a need to the Applicant is beyond rational logical thought. If

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Applicant had Objected to a particular witness or the whole witness list, then Applicant may have set grounds for Objecting to their being Subpoenaed but as this did not happen, Applicant has missed the top step and fallen down the stairs on this issue. In addition, as these are my witnesses and I feel the need for them, for the Applicant to speak against this need is an attempt to insert his will into mine and his efforts would be better spent elsewhere.

1C. Applicant says Protestant "...has failed..(to provide)...justification for having each of the witnesses be made subject to subpoena."

If the Applicant is not aware that the simple asking of a person does not mean they will show up unless they are actively involved in the issue or remunerated, then the Applicant is not aware also that certain State or other official employees cannot testify for a certain side in disputed legal proceedings, only that they must give fair and unbiased testimony of fact. If this reason wasn't obvious to the Applicant then I feel that I cannot be burdened with Applicant's ignorance or most of my Motions would be spent explaining the procedures to him and thus overburdening the Hearing Officer with useless diatribe and would thus waste everybody's time.

2. The Applicant's statement that I have "....identified more witnesses than can be heard at the scheduled hearing." is presumptuous and insulting at best. Conclusions that can be drawn for this statement are as follows:

A. It is the length of the hearing that is important and not the substance.

B. Because of A, there is an assumption as to the outcome of the hearing and this presumes that he is already aware that a decision has been made.

C. As Applicant has no idea how long each witness will spend testifying, how he can presume this is without offered explanation. Separately, Protestant feels this Objection should be ignored as it is not a Motion To Quash as required by Rule 525 by the Department.

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For these reasons and more that Protestant resisted the urge to put to paper, Protestant offers this Response and renews his plea to the Department Hearing Officer to issue referenced Subpoenas.

Dated this 31st day of May, 1999

Lee Halper-Protestant

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JUN - 1 1999
Department of Water Resources

Lee J. Halper
331 S 230 W
Jerome, ID 83338
208-324-2240
208-324-4422 fax

BEFORE THE DIRECTOR

IDAHO DEPARTMENT OF WATER RESOURCES

In the Matter of Application of Jerome Cheese Company For Water Rights Transfer No. 5401 (Water Right No. X36-07337E), Lee Halper, Protestant Jerome Cheese Company, Applicant	Protestant's Notice of First Response to Applicant's First Corrected Set of Interrogatories, Requests for Admission and Requests for Production of Documents AND Protestant's Issuance of Supplemental list of Witnesses and Exhibits

COMES NOW Protestant Lee Halper and Issues Notice to the Department that he has submitted his First Response to Applicants First Corrected Set of Interrogatories, Requests for Admission and Requests for Production of Documents. In addition, Protestant Issues Notice of his Issuance of a Supplemental List of Witnesses and Exhibits.

Dated this 27th day of May, 1999

Lee Halper-Protestant

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JUL 26 2000

CERTIFICATE OF SERVICE

I hereby certify that on June 1, 1999 I caused to be served a true and correct copy of the foregoing to each of the persons named below by the method indicated below each of their names.

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

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

Mr. Christopher H. Meyer
Givens Pursley LLP
PO Box 2720
Boise, ID 83701-2720
Hand Delivery

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

Lee Halper

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JUL 26 2000

MEMORANDUM

To: File T5401

From: L. Glen Saxton

RE: **OFFICE VISIT**

Date: June 1, 1999

On this date, Lee Halper and Bill Chisholm visited this office and hand delivered the following items:

- Protestant William K. Chisholm's First Response to Applicant's First Corrected Set of Interrogatories, Requests for Admissions and Requests for Production of Documents

- Protestant's Objection to Applicant's Motion to Reset Hearing Time

- Protestant Lee Halper's Response to Applicant's Objection to Protestant's Motion to Issue Subpoenas

- Protestant's Notice of First Response to Applicant's First Corrected Set of Interrogatories, Requests for Admission and Requests for Production of Documents and Protestant's Issuance of Supplemental list of Witnesses and Exhibits

- Twenty (20) draft subpoenas

While here, Mr. Halper advised that the Motion to Issue Subpoenas which he filed with the department on May 26, 1999 was still pending. I advised him that on Friday, May 28, 1999, the department had faxed an order denying his motion to issue subpoenas. He said he had not received it, so I made a photocopy of it and gave a copy to both Mr. Halper and to Mr. Chisholm.

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JUL 26 2000

Merritt, Allen

From: slvrchst@magiclink.com
Sent: Monday, May 31, 1999 3:52 PM
To: allen merritt
Subject: OBJECTION TO RESET TIME

BEFORE THE DIRECTOR
IDAHO DEPARTMENT OF WATER RESOURCES

In the Matter of Application of Jerome Cheese Company For Water Rights Transfer No. 5401 (Water Right No. X36-07337E)Lee Halper, ProtestantJerome Cheese Company, Applicant))))))))) Protestant's Objection to Applicant's Motion to Reset Hearing Time

COMES NOW Protestant Lee Halper and enters his Objection to Applicant's Motion to Reset Hearing Time for the following reasons:

1. This hearing date has been known for a reasonable time and no previous Motion was entered. This suggests that Applicant has made another commitment in the interim that he deems more important than the resolution of this Transfer Protest. Such being the case, Applicant should be held to his first commitment, this hearing date.
2. Motion for Continuance was filed by this Protestant and successfully Objected to by the Applicant. If Applicant was aware of the other commitment prior to issuing this Objection, then he asks the Department to grant him special and unequal privilege. If Applicant has only recently been made aware of this conflicting engagement, he has two choices; file for a continuance or be prepared to attend the full and complete hearing.
3. Applicant presumes that Protestants will be able to fully depose this witness in the 4 hours available if this Motion is granted. If the Protestants are not allowed to fully avail themselves of this witness then due process will be denied them by the Department.

4. The Applicant could have extended the simple courtesy to the Protestants to ask them first if they would have Objection to this rescheduling by a simple phone call. As this was not done, it puts the Department in the unfavorable light in the Protestants eyes if this Motion is granted and unduly affects both the Department and the Protestants against their will.

For these reasons, Protestant requests the Department to Deny Applicant's Motion to Reset Hearing Time.

Dated this 31st day of May, 1999

_____
Lee Halper-Protestant

MICROFILMED
JUL 26 2000

Merritt, Allen

From: slvrchst@magiclink.com
Sent: Monday, May 31, 1999 3:54 PM
To: allen merritt
Subject: RESPONSE TO APPLICANTS OBJECTION TO SUBPOENAS

BEFORE THE DIRECTOR
IDAHO DEPARTMENT OF WATER RESOURCES

In the Matter of Application of Jerome Cheese Company For Water Rights Transfer No. 5401 (Water Right No. X36-07337E),Jerome Cheese Company, ApplicantLee Halper, Protestant))))))))) Protestant Lee Halper's Response to Applicant's Objection to Protestant'sMotion to Issue Subpoenas

COMES NOW Protestant Lee Halper and Responds to Applicants Objection by addressing and answering each of the issues Applicant brings forth.

1A. Applicant says Protestant "...has failed to describe the nature of the testimony to be elicited..."
Protestant is under no requirement to supply the nature of the testimony to the Applicant. If the Applicant requires the nature of the testimony, he has the ability to depose whatever witness he cares to depose and thereby elicit the nature of the testimony. Further, to require the Protestant to know the full nature of the testimony is to assume that Protestant has powers beyond the realm of normal humans and Protestant has never claimed such.

1B. Applicant says Protestant "...has failed to describe...the need for the witness..."
Protestant has the right to any witness he chooses and to have to prove a need to the Applicant is beyond rational logical thought. If Applicant had Objected to a particular witness or the whole witness list, then Applicant may have set grounds for Objecting to their being Subpoenaed but as this did not happen, Applicant has missed the top step and fallen down the stairs on this issue. In addition, as these are my witnesses and I feel the need for them, for the Applicant to speak against this need is an attempt to insert his will into mine and his efforts would be better spent elsewhere.

1C. Applicant says Protestant "...has failed..(to provide)...justification for having each of the witnesses be made subject to subpoena."
If the Applicant is not aware that the simple asking of a person does not mean they will show up unless they are actively involved in the issue or remunerated, then the Applicant is not aware also that certain State or other official employees cannot testify for a certain side in disputed legal proceedings, only that they must give fair and unbiased testimony of fact. If this reason wasn't obvious to the Applicant then I feel that I cannot be burdened with Applicant's ignorance or most of my Motions would be spent explaining the procedures to him and thus overburdening the Hearing Officer with useless diatribe and would thus waste everybody's time.

JUL 28 2000

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MAY 28 1999
Department of Water Resources

ORIGINAL

Christopher H. Meyer, Esq. Email: chm@givenspursley.com
Michael C. Creamer, Esq. Email: mcc@givenspursley.com
GIVENS PURSLEY LLP Office: 208-388-1200
277 North 6th Street, Suite 200 Fax: 208-388-1300
P.O. Box 2720
Boise, Idaho 83701-2720
Counsel for Applicant Jerome Cheese Company

BEFORE THE
IDAHO DEPARTMENT OF WATER RESOURCES

In the Matter of Application For Transfer No. 5401 (Water Right No. X36-07337E) Jerome Cheese Company, Applicant William K. Chisholm, Lee J. Halper, Protestants	**APPLICANT JEROME CHEESE COMPANY'S MOTION TO RESET HEARING TIME**

COMES NOW Applicant Jerome Cheese Company by and through its attorneys, and requests that the hearing currently scheduled in this matter for June 8, 1999, at 9:00 a.m., be reset to June 8, 1999, to begin at 8:00 a.m., in order to accommodate Jon Davis, a witness for the Applicant, who must leave for the airport at 11:00 a.m. that morning.

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Dated this 26th day of May, 1999.

GIVENS PURSLEY LLP

By _____
Michael C. Creamer

Attorneys for Applicant
Jerome Cheese Company

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JUL 26 2000

CERTIFICATE OF SERVICE

I hereby certify that on May 26, 1999 I caused to be served a true and correct copy of the foregoing to each of the persons named below by the method indicated below each of their names.

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

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

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

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

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

Michael C. Creamer

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JUL 26 2000

ORIGINAL

RECEIVED
MAY 28 1999
Department of Water Resources

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

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

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MAY 28 1999
Department of Water Resources

BEFORE THE
IDAHO DEPARTMENT OF WATER RESOURCES

In the Matter of Application For Transfer No. 5401 (Water Right No. X36-07337E) Jerome Cheese Company, Applicant William K. Chisholm, Lee J. Halper, Protestants	**APPLICANT JEROME CHEESE COMPANY'S OBJECTION TO REQUEST FOR SUBPOENAS**

COMES NOW Applicant Jerome Cheese Company by and through its attorneys, and enters its objection to Protestant Lee Halpler's Motion to Issue Subpoenas for the following reasons:

1. The Protestant has failed to describe the nature of the testimony to be elicited, the need for the witness, or any other justification for having each of the witnesses be made subject to subpoena.

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JUL 26 2000

2. The Protestant has identified more witnesses than can be heard at the scheduled hearing.

Dated this 26th day of May, 1999.

GIVENS PURSLEY LLP

By _____
Michael C. Creamer

Attorneys for Applicant
Jerome Cheese Company

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JUL 26 2000

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

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

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Southern Regional Manager
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Michael C. Creamer

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JUL 26 2000

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MAY 28 1999
Department of Water Resources

Christopher H. Meyer, Esq. Email: chm@givenspursley.com
Michael C. Creamer, Esq. Email: mcc@givenspursley.com
GIVENS PURSLEY LLP Office: 208-388-1200
277 North 6th Street, Suite 200 Fax: 208-388-1300
P.O. Box 2720
Boise, Idaho 83701-2720
Counsel for Applicant Jerome Cheese Company

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MAY 2[illegible] 1999
Department of Water Resources

BEFORE THE
IDAHO DEPARTMENT OF WATER RESOURCES

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

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

I. WITNESSES

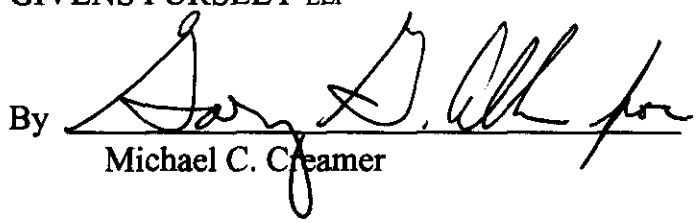
The Applicant may call any of the following persons as expert and/or fact witnesses:

Charles E. Brockway, Sr., Ph.D., P.E., Brockway Engineering, P.L.L.C.
Charles E. Brockway, Jr., Brockway Engineering, P.L.L.C.

MICROFILMED
JUL 26 2000

Dated this 26th day of May, 1999.

GIVENS PURSLEY LLP

By 

Michael C. Creamer

Attorneys for Applicant
Jerome Cheese Company

MICROFILMED
JUL 26 2000

CERTIFICATE OF SERVICE

I hereby certify that on May 26, 1999 I caused to be served a true and correct copy of the foregoing to each of the persons named below by the method indicated below each of their names.

Mr. William K. Chisholm
19073 E. Hwy. 30
Buhl, ID 83316
email: chisholm@rmci.net
☑ U.S. Mail ☐ Fax ☐ By hand ☐ Overnight
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Original to:
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1301 N. Orchard St.
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Boise, ID 83720-9000
☑ U.S. Mail ☐ Fax ☐ By hand ☐ Overnight

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

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Michael C. Creamer

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JUL 26 2000

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MAY 27 1999
Department of Water Resources

Lee J. Halper
331 S 230 W
Jerome, ID 83338
208-324-2240
208-324-4422 fax

BEFORE THE DIRECTOR

IDAHO DEPARTMENT OF WATER RESOURCES

In the Matter of Application of Jerome Cheese Company For Water Rights Transfer No. 5401 Lee Halper, Protestant Jerome Cheese Company, Applicant	Water Right No. X36-07337E Motion to Issue Subpoenas

COMES NOW Lee Halper, Protestant, and requests that the Department issue required Subpoenas of Appearance in the above June 8, 1999, 9 A.M. scheduled matter. A list of those who would be subject to these Subpoenas follows:

John Sandy, State Senator
Laird Noh, State Senator
Sonny Buhider, D.E.Q.
Mike McMasters D.E.Q.
Mike Echeverri D.E.Q.
Brad Gilmore, Twin Falls City
Marv Patten, I.S.D.A.
Lewis Eilers, Idaho Dairyman's Association
Jim Stanton, I.D.W.R.
Donna West, D.E.Q.
Dr. Greg Nelson, Farm Bureau
Stan Clark, Governor's Office
Scott Brown, I.C.L.
Mike Mitchell, I.S.D.A.
Dennis Maughan, Twin Falls County

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JUL 26 2000

Art Brown, Jerome County

Bub Loiselle, E.P.A.

Karl Dreher, I.D.W.R. (John Doe on Witness list)

Charlie Lenkner, D.V.M. (John Doe on Witness list)

Kenneth W. Neely, I.D.W.R. (John Doe on Witness list)

Janet Crockett, I.D.W.R. (John Doe on Witness list)

Al Lance, A.G. (John Doe on Witness list)

Scott Bybee, P.E. (John Doe on Witness list)

Marj Schmidt, City of Jerome (John Doe on Witness List)

Applicant respectfully requests that Hearing Officer sign and return Subpoenas to Protestant for Service and resist any and all Motions to Quash Subpoenas. Said Subpoenas are being drafted and will be mailed soon to Hearing Officer.

Dated this 26th day of May, 1999

Lee Halper-Protestant

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JUL 26 2000

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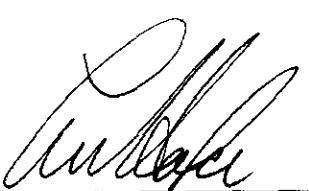
I hereby certify that on May 26, 1999 I caused to be served a true and correct copy of the foregoing to each of the persons named below by the method indicated below each of their names.

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

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

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

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



Lee Halper

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JUL 26 2000

Merritt, Allen

From: slvrchst@magiclink.com
Sent: Thursday, May 27, 1999 3:30 PM
To: chris meyer; bill chisholm; allen merritt; norm young/l.glen saxton
Subject: Protestant supplemental witness/exhibit list

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

BEFORE THE IDAHO DEPARTMENT OF WATER RESOURCES

In the matter of Application for Transfer No. 5401 (Water Right No. X36-07337E)

Jerome Cheese Company, Applicant
Lee Halper, Protestant

Protestant Lee Halper's Supplemental List of Witnesses and Exhibits

COMES NOW Protestant Lee Halper and provides the following list of witnesses and exhibits:

I. Witnesses
Karl Dreher, I.D.W.R.
Charlie Lenkner, D.V.M.
Kenneth W. Neely, I.D.W.R.
Janet Crockett, I.D.W.R.
Al Lance, A.G.
Scott Bybee, P.E.
Marj Schmidt, City of Jerome
Amber Felton, IRC

II. Exhibits:
1. All Discovery documents of Applicant and Protestant
2. U.S. District Court Case No. CY-98-3003-EFS
3. Phase 1 TMDL Plan
4. All documents in possession and command of witnesses.
5. IDWR "Nitrate in Idaho's Ground Water" April 1999
6. IDWR Bulletin No. 50 Part 1 and 2
7. U of I production of "The Invisible Drought" circa 1998
8. USGS Fact Sheets FS-066-99 and 137-98 and others.
9. USGS Report 98-4203
10. NRCS Ag Waste Management Field Handbook Part 651
11. USDA/DEQ Scott's Pond Project
12. Water Resources bulletin Vol 32, No. 3
13. NRCS Standard Code 590
14. DEQ report of 1994 by Virginia Gillerman and Tamra Schiappa IGS
15. Various letters and articles
16. 1998 Water Quality Status Report part VI DEQ
17. I.S.W.A.P. by DEQ 1999
18. Idaho Ground Water quality plan
19. EPA report "cattle feedlots and the environment" 1972
20. State and local codes and ordinances
21. IDWR Records of transfers
22. Any and all records, reports or documents in the public realm.

Dated this 27th day of May, 1999
By. Lee Halper

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JUL 26 2000

2. The Applicant's statement that I have "....identified more witnesses than can be heard at the scheduled hearing." is presumptuous and insulting at best. Conclusions that can be drawn for this statement are as follows:

A. It is the length of the hearing that is important and not the substance.

B. Because of A, there is an assumption as to the outcome of the hearing and this presumes that he is already aware that a decision has been made.

C. As Applicant has no idea how long each witness will spend testifying, how he can presume this is without offered explanation. Separately, Protestant feels this Objection should be ignored as it is not a Motion To Quash as required by Rule 525 by the Department.

For these reasons and more that Protestant resisted the urge to put to paper, Protestant offers this Response and renews his plea to the Department Hearing Officer to issue referenced Subpoenas.
Dated this 31st day of May, 1999

_____
Lee Halper-Protestant

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JUL 26 2000

RECEIVED
MAY 26 1999
Department of Water Resources

Subject: OBJECTION TO ORDER DENYING MOTIONS
Date: Tue, 25 May 1999 10:17:44 -0600
From: slvrchst@magiclink.com
To: norm young <nyoung@idwr.state.id.us>, chris meyer <chm@givenspursley.com>, bill chisholm <chisholm@rmci.net>, allen merritt <amerritt@idwr.state.id.us>

Dear Norm,
Please pass this on to Mr. Saxton. As you will note, I am notifying all parties via email and will send hard mail today as well.

Dear Mr. Saxton,
I formally object to your decision I received via fax this morning. If you would like formal legal papers drafted in this regard, I will do that if you let me know that is your wish.
First, you have not received my Response to Mr. Meyer's Response Objecting to my Motion for Electronic hearing.
Second, I have been advised that the City Council of Jerome is leaning very strongly on intervening in this matter, both Transfers, and there is a yet unresolved question as to their non-notification of these Transfers through the bureaucratic channels of the City. IDWR notified the City Administrator in March but it somehow failed to find its way to the Council. The first they heard of all this was in the Times News report on the preconference hearing. I hope to have this question of possible withholding of pertinent information resolved today and I will forward those findings to you.
I realize there is the possibility of combining these transfers but I renew my claim that all of the underlying issues are different, involve different witnesses and different societal groups and thus these Transfers should be kept separate. I was called and notified that another group of individuals from Eastern Idaho has protested the second Jerome Cheese Transfer but the messenger delivered the Protest and money to the BLM office right next door to IDWR's office in Idaho Falls. The BLM people claim they took it to IDWR but IDWR cannot find it so the Protestant is waiting for the check to clear to see who deposited it.
If nothing else, they will intervene, so the question of their participation in this 'combined' hearing is added to the mix. I would ask for a Temporary Stay or Reversal on your Order Denying Motions until all interested parties and their issues are heard from, and I stress that these parties represent thousands of families very concerned with these Transfers.
Thank you and please let me know if you require formal papers issued.
Lee Halper

MICROFILMED
JUL 26 2000

Merritt, Allen

From: slvrchst@magiclink.com
Sent: Tuesday, May 25, 1999 10:18 AM
To: norm young; chris meyer; bill chisholm; allen merritt
Subject: OBJECTION TO ORDER DENYING MOTIONS

Dear Norm,
Please pass this on to Mr. Saxton. As you will note, I am notifying all parties via email and will send hard mail today as well.

Dear Mr. Saxton,
I formally object to your decision I received via fax this morning. If you would like formal legal papers drafted in this regard, I will do that if you let me know that is your wish.
First, you have not received my Response to Mr. Meyer's Response Objecting to my Motion for Electronic hearing.
Second, I have been advised that the City Council of Jerome is leaning very strongly on intervening in this matter, both Transfers, and there is a yet unresolved question as to their non-notification of these Transfers through the bureaucratic channels of the City. IDWR notified the City Administrator in March but it somehow failed to find its way to the Council. The first they heard of all this was in the Times News report on the preconference hearing. I hope to have this question of possible withholding of pertinent information resolved today and I will forward those findings to you.
I realize there is the possibility of combining these transfers but I renew my claim that all of the underlying issues are different, involve different witnesses and different societal groups and thus these Transfers should be kept separate. I was called and notified that another group of individuals from Eastern Idaho has protested the second Jerome Cheese Transfer but the messenger delivered the Protest and money to the BLM office right next door to IDWR's office in Idaho Falls. The BLM people claim they took it to IDWR but IDWR cannot find it so the Protestant is waiting for the check to clear to see who deposited it.
If nothing else, they will intervene, so the question of their participation in this 'combined' hearing is added to the mix. I would ask for a Temporary Stay or Reversal on your Order Denying Motions until all interested parties and their issues are heard from, and I stress that these parties represent thousands of families very concerned with these Transfers.
Thank you and please let me know if you require formal papers issued.
Lee Halper

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JUL 26 2000

RECEIVED
MAY 25 1999
Department of Water Resources

ORIGINAL

Christopher H. Meyer, Esq. Email: chm@givenspursley.com
Michael C. Creamer, Esq. Email: mcc@givenspursley.com
GIVENS PURSLEY LLP Office: 208-388-1200
277 North 6th Street, Suite 200 Fax: 208-388-1300
P.O. Box 2720
Boise, Idaho 83701-2720
Counsel for Applicant Jerome Cheese Company

BEFORE THE
IDAHO DEPARTMENT OF WATER RESOURCES

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

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

I. WITNESSES

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

Charles E. Brockway, Ph.D., P.E., Brockway Engineering, P.L.L.C.
William K. Chisholm, Protestant

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Jon Davis, General Manager, Jerome Cheese Company
Louis Eilers, Executive Director, Idaho Dairymen's Association
Lee J. Halper, Protestant
Paul K. Hunter, P.G., EnviroSearch International
Richard K. Kelsey, EnviroSearch International
J. Rex Minchey, Maintenance Manager, Jerome Cheese Company
John A. Sandy, Owner of Water Right
Each of the County Commissioners of Jerome County

The Applicant also reserves the right to call any person disclosed as a potential expert and/or fact witness by any other party.

II. EXHIBITS

The Applicant's consultants are now identifying and preparing exhibits which will be used to illustrate the location of the water right and hydrological aspects of the proposed transfer. Other exhibits now being prepared will summarize and highlight public interest issues relating to the existing and proposed use of the water right. The Applicant also intends to introduce several maps of showing Jerome and the surrounding area. The Applicant will share any and all such exhibits with the Protestants as soon as the documents become available.

The Applicant will supplement this disclosure of witnesses and documents consistent with the rules of procedure and orders of the Idaho Department of Water Resources.

Dated this 24th day of May, 1999.

GIVENS PURSLEY LLP

By _____
Christopher H. Meyer

Attorneys for Applicant
Jerome Cheese Company

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JUL 26 2000

CERTIFICATE OF SERVICE

I hereby certify that on May 24, 1999 I caused to be served a true and correct copy of the foregoing to each of the persons named below by the method indicated below each of their names.

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

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

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

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

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

Christopher H. Meyer

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JUL 26 2000

RECEIVED
MAY 25 1999
Department of Water Resources

Subject: REREADING
Date: Mon, 24 May 1999 08:49:32 -0600
From: slvrchst@magiclink.com
To: norm young <nyoung@idwr.state.id.us>

Dear Norm,
Yet another letter to pass on to Mr. Saxton and thank you again.
In my rereading of the May 20th letter from Mr. Meyer wherein he objects to having electronic means during the formal hearing, I think I may have misunderstood his misunderstanding the first time around. I think he thinks I want the whole hearing to be electronic, with me at home with my phone, he in his office with his, and so on. This has never been my intent and so to clarify, I have always thought that we would hold the hearing in a room in Twin Falls, all parties present. It would only be witnesses who are in distant locales and because of constraints of time and distance that are a part of the hearing via electronic means.
I hope this clarifies matters. Thank you.
Lee Halper
I will mail this letter out today to all parties.

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JUL 26 2000

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

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

May 25, 1999

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

Dear Interested Party:

I have enclosed a copy of the Order Denying Motions issued in connection with above referenced transfer application.

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

Sincerely,

Julie L. Yarbrough

JULIE L. YARBROUGH, Senior Secretary
Water Allocation Bureau

Enclosure

c: Allen Merritt - IDWR Southern

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JUL 25 2000

P. 01

TRANSACTION REPORT

MAY-25-99 TUE 09:01 AM

DATE START	RECEIVER	TX TIME	PAGES	TYPE	NOTE	M#
MAY-25 08:59 AM	912083244422---80935	2'50"	5	SEND	OK	

Halper

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JUL 28 2000

P.01

TRANSACTION REPORT

MAY-25-99 TUE 08:57 AM

DATE START	RECEIVER	TX TIME	PAGES	TYPE	NOTE	M#
MAY-25 08:54 AM	93881300	2'42"	5	SEND	OK	

Cramer + Meyer

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RECEIVED
MAY 25 1999
Department of Water Resources

Lee J. Halper
331 S 230 W
Jerome, ID 83338
208-324-2240
208-324-4422 fax

BEFORE THE DIRECTOR

IDAHO DEPARTMENT OF WATER RESOURCES

In the Matter of Application of Jerome Cheese Company for Water Rights Transfer No. 5401	Water Right No. X36-07337E
Lee Halper, Protestant	Protestant Lee Halper's First Notice of Serving Discovery
Jerome Cheese, Applicant	

COMES NOW Protestant Lee Halper and provides this notice of service of discovery. This notice is provided pursuant to Idaho R. Civ. Pro. 33(A)(5)(Interrogatories), Idaho R. Civ. Pro. 34(D)(requests for production), and Idaho R. Civ. Pro. 36(C)(requests for admission). These rules are applicable to this contested case per IDAPA 37.01.01.520.02

The following discovery has been served:

On Givens Pursley, LLP Attorneys for Applicant and specifically to Christopher H. Meyer.

Protestant Lee Halper's First Set of Interrogatories, Requests for Admission and Requests for Production of Documents Directed to Applicant Jerome Cheese Company (dated May 24, 1999)

Dated this 24TH day of May, 1999

Lee Halper-Protestant

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JUL 26 2000

CERTIFICATE OF SERVICE

I hereby certify that on May 24, 1999 I caused to be served a true and correct copy of the foregoing to each of the persons named below by the method indicated below each of their names.

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

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

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

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

Original to:
Mr. Karl J. Dreher
Idaho Department of Water Resources
PO Box 83720
Boise, ID 83720-0098
Via US Mail

Lee Halper

MICROFILMED
JUL 25 2000

RECEIVED
MAY 25 1999
Department of Water Resources

Lee J. Halper
331 S 230 W
Jerome, ID 83338
208-324-2240
208-324-4422 fax

BEFORE THE DIRECTOR

IDAHO DEPARTMENT OF WATER RESOURCES

In the Matter of Application of Jerome Cheese Company For Water Rights Transfer No. 5401 Lee Halper, Protestant, Jerome Cheese Company, Applicant	Water Right No. X36-07337E Protestant Lee Halper's First Notice of Serving of List of Witnesses

COMES NOW Lee Halper and provides this notice of service of a list of witnesses in the above matter.

The List of Witnesses has been served on:

Givens Pursley, LLP, Attorneys for Applicant and specifically to Christopher H. Meyer

Dated this 24th day of May, 1999

Lee Halper-Protestant

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JUL 26 2000

CERTIFICATE OF SERVICE

I hereby certify that on May 24, 1999 I caused to be served a true and correct copy of the foregoing to each of the persons named below by the method indicated below each of their names.

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

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

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

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

Original to:
Mr. Karl J. Dreher
Idaho Department of Water Resources
PO Box 83720
Boise, ID 83720-0098
Via US Mail

Lee Halper

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JUL 26 2000

RECEIVED
MAY 25 1999
Department of Water Resources

Lee J. Halper
331 S 230 W
Jerome, ID 83338
208-324-2240
208-324-4422 fax

BEFORE THE DIRECTOR

IDAHO DEPARTMENT OF WATER RESOURCES

In the Matter of Application of Jerome Cheese Company For Water Rights Transfer No. 5401 Lee Halper, Protestant, Jerome Cheese Company, Applicant	Water Right No. X36-07337E Submission of list of Witnesses

COMES NOW Lee Halper, and submits a list of possible witnesses Protestant intends to call whether by voluntary submittal or, if necessary, by Subpoena issued by the Department.

Governor Cecil Andrus
State Senator John Sandy
State Senator Laird Noh
Sonny Buhider, DEQ
Mike McMasters, DEQ
Mike Echeverri, DEQ
Brad Gilmore
Peter Maier PhD, PE
Dr. David Pimentel-Cornell University
Marv Patten, Dept. Of Agriculture
Lewis Eilers, Idaho Dairymen
Jim Stanton, IDWR
Roy Mink, U of I
Donna West, DEQ
Dr. Scott Kellogg, U of I
1998 U of I video 'The Invisible Drought'
Dr. Greg Nelson, Farm Bureau
Art Brown, Jerome County
Max Hatfield
Stan Clark
Scott Brown, ICL

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Scott Dye, Sierra Club
Mike Rupert, USGS
Mike Mitchell, ISDA
Bub Loiselle, EPA
Dennis Maughan
Roy Prescott
John Does

Dated this 24th day of May, 1999

Lee Halper-Protestant

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JUL 26 2000

RECEIVED
MAY 25 1999
Department of Water Resources

Lee J. Halper
331 S 230 W
Jerome, ID 83338
208-324-2240
208-324-4422 fax

BEFORE THE DIRECTOR

IDAHO DEPARTMENT OF WATER RESOURCES

In the Matter of Application of Jerome Cheese Company For Water Rights Transfer No. 5401 (Water Right No. X36-07337E) Lee Halper, Protestant Jerome Cheese Company, Applicant	**Response to Response in Opposition to Motion for Order Allowing Electronic Hearing**

COMES NOW Lee Halper, Protestant, and files this Response to the Response in Opposition to Motion for Order Allowing Electronic Hearing filed by Applicant's Attorney dated May 19, 1999.

Lee Halper counters Jerome Cheese Company's arguments by referencing their Response pages and sections:

Page 3 Section I. Protestant, in his Motion for Order, never asserted that a right to this type of hearing existed, just that the Department had the ability to grant same. Applicant introduces non-meaningful argument in this section and comes to the conclusion that the Department has the ability to grant this type of hearing.

Page 4 Section II. Protestant is under no obligation to offer explanation, supporting documentation, why witnesses are unable to attend in person, or other stated objections, except if so ordered by the Department, which has not been forthcoming, but if said order would be forthcoming, Protestant is more than willing to comply with the Hearing Officer's directives. Protestant takes personal offense with Applicants' statement that I "seek to inflict financial pain on this and other water right applicants in order to open up the political process." Protestant never made a statement that even

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approached the meaning implied in these words. This is not the first incident wherein Applicant has made derogatory remarks about the Protestant(s) and if Applicant cannot act with honor and manners befitting gentlemen, Protestant would seek redress through the Hearing Officer, and barring that, in person to the purveyor and instigator of the insulting accusation.

Page 5 Section III. As the Applicant has the burden of proof and by the very definition of title 'Applicant' is pleading for privilege. To state that the Applicant should have special privilege or convenience is a promotion of an elitist attitude and by so doing, implies the Department is complicit in this type of prejudicial behavior so abhorred by our Nation and contrary to our sense of equal justice under the law.

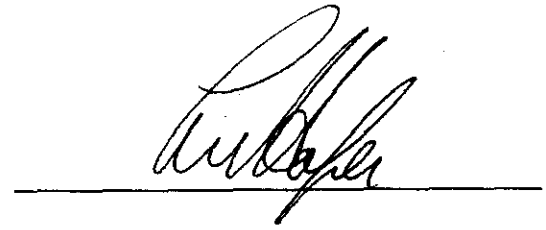
Page 5 Section VI. Applicant cites one case with no supporting or background explanation and seeks to generalize. In addition, Applicant seems to be telling the Department what to do rather than offering clear and precise evidence with which the Department can exercise its discretion.

Page 6 Section V. Once again, Applicant puts an onerous burden on the Protestant(s) by assuming our behavior to approach the 'heated' and 'argumentative' stages. Also again, Applicant puts words into the Protestant(s) mouths on Page 7. Applicant states that the lack of physical presence of the witness will deprive the hearing officer (and counsel) of seeing the witnesses and evaluating their live testimony. I would hope that IDWR and the Bar Association would not preclude blind people from acting as hearing officers or lawyers because of this argument.

Page 7 Section VI. As learned counsel further states, the Department is not bound by stated Civil Procedure rules and is therefore more free to use God-given common sense and a sense of justice in its decisions and this is, perhaps, the reason these rules do not apply.

For the responses above, Protestant respectfully hopes the Department will set aside Applicants Response.

Dated this 22nd day of May, 1999



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JUL 26 2000

Lee Halper-Protestant

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JUL 26 2000

CERTIFICATE OF MAILING

I hereby certify that on the 24th day of May, 1999, I caused to be served a true and correct copy of the foregoing to each of the parties named below with all required charges prepared, by mailing a copy thereof to:

Lee Halper-Protestant

Christopher H. Meyer
Givens Pursley LLP
PO Box 2720
Boise, ID 83701-2720
208-388-1300 fax

L. Glen Saxton
IDWR
PO Box 83720
Boise, ID 83720-0098
208-327-7866 fax

Bill Chisholm
19073 E. HWY 30
Buhl, ID 83316

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JUL 26 2000

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

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

MEMORANDUM

To: L. Glen Saxton

From: Karl J. Dreher

RE: APPOINTMENT AS HEARING OFFICER - PROCEDURE RULE 410

Date: May 24, 1999

You are hereby appointed as hearing officer and are authorized to represent the department as provided by IDAPA Rule 37.01.01410 (Procedure Rule 410) in the following matter:

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

Date: June 8, 1999

Time: 9:00 a.m.

Location: Obenchain Community Room
264 Main Ave. South
Twin Falls, ID

MICROFILMED
JUL 26 2000

Subject:
5/20 GIVENS PURSLEY LETTER T 5401 & 5436

RECEIVED
MAY 24 1999
Department of Water Resources

Date:
Fri, 21 May 1999 12:14:01 -0600
From:
slvrchst@magiclink.com
To:
allen merritt <amerritt@idwr.state.id.us>, norm young <nyoung@idwr.state.id.us>

Dear Allen and Norm,
NOTE: Norm, this letter is for L. Glen Saxton if you'd kindly pass it on to him.
This letter will go out today regular mail to all parties in these Transfer Protests.

I received a copy of a letter today from Chris Meyer to Mr. Merritt and Mr. Saxton and felt the need to immediately reply as I felt it could affect my Motion for Continuance. I will reference by page and paragraph in the hope that the format of the letter was the same to all recipients.

Page 1, paragraph 3. Mr. Merritt is doing the difficult job of trying to accommodate all parties in finding a date for the preconference hearing for Transfer 5436. In stating that this is unacceptable to Jerome Cheese, Mr. Meyer does not state but allows for presumption that this in some way harms Jerome Cheese. As I have stated before, Jerome Cheese has adequate water to operate its business and can in no way be harmed by a process that allows enough time to fully and adequately address the issues. If there were harm, I would like to see the qualifications of that harm.

Page 2, paragraph 1. Mr. Meyers proposal of a combined hearing is ludicrous in that the geological, hydrogeological and 42-222 issues are completely separate and different between T 5401 and 5436. In addition, this would be asking the Protestants of 5436 (other than Bill and I) to sacrifice their time and money during the time that 5401 is being litigated.

Page 2, paragraph 2. In his second sentence, Mr. Meyer offers a fact but no evidence of harm, again. Because of his Response in Opposition to Motion for Order Allowing Electronic Hearing, I am issuing a Response to his Response next week. In terms of an electronic hearing for a preconference hearing, the whole idea of an electronic hearing is to supply experts and witnesses and this is not necessary for a preconference hearing.

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Page 2, paragraph 3. In this, Mr. Meyer dismisses Mr. Ihler and Ms. Thornborrow as valueless without hearing their concerns. If he had done this to me, I would have taken offense.

Page 2, paragraph 4. As Mr. Meyer has not received my answers to his Discovery, I cannot see how he can say the public interest issues are the same for both transfers. Even if he had received my answers, for him to imply that they will be the same for both is presumptuous, at best. I sense only that Mr. Meyer wants a reduction in the evidence, all evidence, and not a full and open process.

Page 2, paragraph 5. Mr. Meyer does not state what the 'substantial concession' is that Jerome Cheese is making, nor does he list the costs to the Company for delay or associated planning issues other than the costs I perceive to be the burden and cost of his letter.

Page 3, paragraph 1. Mr. Meyers confidence is unbounded especially as he has not seen my responses to Discovery or the burden of my Discovery. I covet his overtime pay borne of his vigorous objections.

Thank you for your consideration.
Sincerely,
Lee Halper

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JUL 26 2000

RECEIVED
MAY 24 1999
Department of Water Resources

BEFORE THE DIRECTOR
IDAHO DEPARTMENT OF WATER RESOURCES

In the Matter of Application of Jerome Cheese Company For Water Right Transfer No. 5401	Water Right No. X36-07337E BILL CHISHOLM's FIRST SET INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS DIRECTED TO APPLICANT JEROME CHEESE CO.

TO: DAVISCO FOODS, INC. dba JEROME CHEESE COMPANY AND HIS ATTORNEYS OF RECORD:

YOU WILL PLEASE TAKE NOTICE that Bill Chisholm requests your sworn responses to the following Interrogatories and Requests for Production of Documents within (15) days for the service hereof in conformance with the Idaho Rules of Civil procedure.

1. INSTRUCTIONS In responding to these Interrogatories and Requests for Production of Documents, you must diligently search all records, files, documents, memory and materials in your possession or available to you or your representatives, and then furnish all responsive information available to you, including information possessed by your employees, officers, directors, agents and attorneys, if any, and any investigators, experts, etc., retained by you or your attorneys (i.e, you must provide responsive information beyond that which is personally known to you). If an interrogatory has subparts, answer each subpart separately and in full and do not limit your answer to the interrogatory as a whole. If an interrogatory cannot be answered in full, answer to the fullest extent possible, specify the reason for your inability to answer the remainder, and state whatever information and knowledge you have regarding the unanswered portion. In addition to supplying the information requested in each interrogatory, please also identify and describe all documents to which you refer in preparing your answers.

Whenever you are asked to identify or describe a document, your description should include, but not be limited to, the following:

1. The name, address, telephone number, occupation, job title, employer of the custodian of the documents;

2. The date of the making of the document and the name, address, telephone number,occupation, job title and employer of each person whose testimony could be used to authenticate and lay the foundation for its introduction into evidence.

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Unless otherwise indicated, the following definitions will be utilized with respect to these Interrogatories and Request for Production:

1, "Documents" means and includes any and all tangible things and documents, whether written, recorded, graphic, typewritten, printed, photocopied, carbon copied or otherwise visually reproduced including, but not limited to, papers, agreements, contracts, letters, cables, wires, notes, memoranda, correspondence, prior drafts, telegrams, patents, pleadings, affidavits, depositions, books, reports, pamphlets, studies, minutes, records, accounting books, maps, plans, sketches, charts,drawings, diagrams, photographs, films, assignments, notebooks, ledgers, bills, statements, invoices, checks, receipts, analyses, surveys, transcriptions and recordings, of which you have any knowledge or information referring, relating or pertaining in any way to the subject matters in connection with which the word "document" is used and includes but without limitation, all originals, all file copies or reproduction, no matter how or by whom prepared, and all drafts prepared in connection with such documents, whether used of not.

2,"Person" shall mean and include a natural person, partnership, corporation or other legal entity together with its principles, agents, employees, representatives, and assigns.

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JUL 26 2000

INTERROGATORIES

INTERROGATORY NO.1 Please identify each person known to you or to your attorneys who has or may have knowledge of any fact pertinent or relevant as to your proposed Water Transfer Application No. 5401. In your answer to this interrogatory, lease includes any person who has been retained, hired or relied upon by you, your agents or representatives to review and issues raised by the Application. In your answer, pleas provide the full name, mailing address, physical address and phone number of each person identified.

INTERROGATORY NO. 2 Please state each and every theory, claim, fact, supposition, scientific study, research or defense upon which you rely as a basis for your claim that this transfer is in compliance with the requirements as stated in Idaho Code 42-222.

INTERROGATORY NO. 3 Please identify every document of which you are aware that supports or tends to support your answer to Interrogatory 2 above.

INTERROGATORY NO.4 Please identify all employees, suppliers or investors, of Jerome Cheese Co who hold public office, or sit on any board that may have regulatory authority over any aspect of Jerome Cheese Company's operations, or whose relatives hold such positions of

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JUL 26 2000

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JUL 26 2000

authority. In your answer, please provide the names, addresses and telephone numbers, payscale, job description, length of employment, shift position, office held, type of supplier, amount of investment.

INTERROGATORY NO 5 Please identify all owners, investors, partners, banks lienholders, mortgage companies, insurance companies or other people or parties who have a financial interest in Jerome Cheese Company and any of its affiliated subsidiaries, parent companies or other related business affiliations. In your answer, please specify the exact financial relationship for each party identified, including their positions, if any on the board, as employees, as stockholders, suppliers, or policy empowered shareholders, their names, their agents or representatives names, addresses, telephone numbers and place of employment.

INTERROGATORY NO. 6 Please list all the dairies which supply milk to your business. In your answer, please include the name of the dairy, the name of the owner and manager of the dairy, the address, phone number and legal description of the dairy, the average yearly gallons or pounds of milk supplied by that diary, the contractual arrangement with the dairy, the base price formula paid to the dairy, the milk transportation costs charged to the dairy if an, and the average yearly reimbursement paid to the dairy for the product supplied and all knowledge you have or can easily

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determine and supply as to the number of milking cows at each of there dairies. Also any documentation that speaks to the size of dairies.

INTERROGATORY NO7 Please verify whether Jerome Cheese's Memorandum of Agreement of 12/16/98 with John Sandy for the purchase of 33 inches of water has been extended past the 120 day deadline noted therein and an and extension agreement available by mutual consent contained therein been drafted and agreed to. Include in your answer, the persons or departments referred to in Section No.5 and all documents or evidence obtained to determine this finding.

INTERROGATORY NO.8 On page 2 of your Application to the Department for this transfer under the category "Remarks', you state "Process generates more waste water than what is brought into the plant." Please specify the source of the water that comes into your plant, the daily amount brought in and the daily amount processed out.

INTERROGATORY NO. 9 Please state the exact reason or reasons for this water transfer. In your answer, delineate all possible scenarios of use, expanded use, future transfer of use, sale, hold for sale, or other possible.

INTERROGATORY NO. !O Was the establishment of Jerome Cheese o. the result of recruitment to Jerome County, Idaho by

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JUL 26 2000

city, county, or state economic development agencies? If so what were the names of such agencies, the name and principal agents or officials involved. If there were enticements in such recruitment, list the type and economic value of any such enticements.

INTERROGATORY NO. 11 Supply any and all documents, contracts and agreements that pertain to Interrogatory number 10.

REQUEST FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1. Please produce each document described or identified or relied upon by you in your response any of the above Interrogatories 1 thru 11.

Dated this 20th day of May, 1999

William K Chisholm

William K. Chisholm

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JUL 26 2000

BEFORE THE
IDAHO DEPARTMENT OF WATER RESOURCES

In the Matter of Application For Transfer No.5401 (Water Right No X36-07337E) Jerome Cheese Co. Applicant William K. Chisholm Protestant	PROTESTANT, WILLIAM K. CHISHOLM, LISTING OF WITNESSES AND DOCUMENTS

PROPOSED WITNESSES

Former Gov. Ceicil D. Andrus
Former Gove. Phil Batt
Governor Dirk Kempthorne
Former Director Idaho State Dept. of Commerece Jim Hawkins
Forrest Hymas
Bonnie Ross
Ralph Peters
Con Paulos
Gerald Ostler
Larry Paine
Stacy Butler, Gooding County Planning and Zoning
Bill Crafton, Twin Falls County Planning and Zoning
Art Brown, Jerome County Planning and Zoning
Marv Patten, Idaho State Department of Agriculture
Lewis Eiler, Idaho Dairy Association
Steve Allred, Idaho State, Dept of Environmental Quality
Brad Gilmore, City of Twin Falls, Environmental Engineer
Chuck Geska, Buhl City Councilman, Pres. Association of Cities
Dennis Maughan, Twin Falls County Commissioner
Rose Mary Barta, Business and Environment Instructor, Boise State University

DOCUMENTS

Letter to Bill Chisholm from Phil Batt voicing concern on industrial livestock production
Letter to Bill Chisholm from Dirk Kempthorne voicing concern on industrial livestock production

Dated this 20th Day of May, 1995

William K. Chisholm

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JUL 26 2000

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on May 21, 1999 I caused to be served a true and correct copy of the foregoing to each of the persons named below by the mails of the United State.

William K. Chisholm

Christopher H. Meye, Esq.
Michael C. Creamer,Esq
GIVENS PURSLEY LLP
277 N 6th St, Suite 200
P.O. Box 2720
Boise, Idaho 83701-2720

Mr. Karl J. Dreher
Director IDWR
1301 N ORchard St.
Statehouse Mail
Boise, Idaho 83720-9000

L. Glen Saxton
Hearing Officer
Idaho Department of Water Resources
1301 North Orchard St.
Statehouse Mail
Boise, Idaho 83720-9000

MICROFILMED
JUL 2 6 2000

Young, Norm

From: slvrchst@magiclink.com
Sent: Monday, May 24, 1999 8:50 AM
To: norm young
Subject: REREADING

Dear Norm,
Yet another letter to pass on to Mr. Saxton and thank you again.
In my rereading of the May 20th letter from Mr. Meyer wherein he objects to having electronic means during the formal hearing, I think I may have misunderstood his misunderstanding the first time around. I think he thinks I want the whole hearing to be electronic, with me at home with my phone, he in his office with his, and so on. This has never been my intent and so to clarify, I have always thought that we would hold the hearing in a room in Twin Falls, all parties present. It would only be witnesses who are in distant locales and because of constraints of time and distance that are a part of the hearing via electronic means. I hope this clarifies matters. Thank you.
Lee Halper
I will mail this letter out today to all parties.

5/24/99

RECEIVED
MAY 24 1999
Department of Water Resources

GIVENS PURSLEY LLP

LAW OFFICES
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PO Box 2720, Boise, Idaho 83701
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W. Hugh O'Riordan
Kenneth L. Pursley
Conley Ward
Stephanie C. Westermeier
Robert B. White
Raymond D. Givens
James A. McClure
OF COUNSEL

May 20, 1999

Via Facsimile and U.S. Mail

Allen D. Merritt, P.E.
Southern Regional Manager
Idaho Department of Water Resources
1341 Fillmore St., Ste. 200
Twin Falls, ID 83301-3380

Mr. L. Glen Saxton
Hearing Officer
Idaho Department of Water Resources
1301 N. Orchard
Statehouse Mail
Boise, ID 83720-9000

Re: Jerome Cheese Company
Water Transfer Nos. 5401 and 5436
Our File No. 5472-1

Dear Messrs. Merritt and Saxton:

This letter responds to outstanding scheduling issues in both of the above-captioned transfer applications. At the outset, let me express my thanks for all your efforts in attempting to coordinate the calendars of the various parties in these matters. It is no small task.

In the case of Transfer No. 5401, a prehearing conference has been held and a hearing has been set for June 8, 1999. One of the protestants, Lee J. Halper, has filed a request for a continuance of that hearing.

In the case of Transfer No. 5436, a prehearing conference has not yet been scheduled. In his letter of May 19, 1999, Mr. Merritt reports that he was unable to find a date acceptable for the protestants in late May. He then proposed scheduling a prehearing conference sometime between June 16 and July 16. This delay is unacceptable to Jerome Cheese Company.

Allow me to propose a compromise which, I believe, ought to satisfy the concerns of all parties and the Department. I suggest that we schedule a combined hearing for both Transfer No. 5401 and 5436 sometime between July 6 and 12.[1] That is far enough out that we ought to be able to find a time when all parties can participate. And it should allow plenty of time for discovery and preparation in both cases.

I further propose that we schedule a prehearing conference in Transfer No. 5436 via telephone conference at the earliest possible date. As you know, Jerome Cheese Company has objected to conducting the formal hearing via electronic means, because that hearing will entail the introduction of evidence and the examination of witnesses. Those concerns do not apply, however, to the prehearing conference. Consequently, an electronic hearing is appropriate for this matter.

Indeed, the likelihood of an additional prehearing conference for Transfer No. 5436 producing anything of value is so low that Jerome Cheese Company would stipulate to dispensing with it altogether, if that would be acceptable to the Department.

I believe that consolidation with a combined hearing set in July (preferably early July) is a reasonable compromise which will benefit all parties. Consolidation of the two hearings will eliminate redundant evidence on "local public interest" issues, which appear to be identical in both cases. It will also eliminate redundant evidence on a variety of other potential issues relating to injury and enlargement, such as consumptive use, season of use, type of use, dry-up, etc. Consolidation will reduce the burden not only on the parties, but on the Department as well.

Please note that this proposal contains a substantial concession on the part of Jerome Cheese Company, in that it would release the June 8 hearing date and thereby allow the protestants substantially more time to prepare their case. Meanwhile, this delay substantially increases costs to Jerome Cheese Company associated with uncertainty over water rights and associated planning issues. Suffice it to say that every day of delay affecting this multi-million dollar operation is costly to the Company.

---

[1] I am now polling our expert witnesses to determine which exact dates are available.

RECEIVED
MAY 24 1999
Department of Water Resources
Southern Region

Subject:
Re: 5/20 GIVENS PURSLEY LETTER T 5401 & 5436
Date:
Fri, 21 May 1999 15:59:22 -0600
From:
slvrchst@magiclink.com
To:
"Young, Norm" <NYOUNG@idwr.state.id.us>
References:
1

Dear Norm,
Thank you for your help. Please also forward this letter to Mr. Saxton
A problem has arisen which is not of my doing which may also affect my Motion for Continuance. I will mail a copy of this to all parties tomorrow. I received the Applicant's first set of Interrogatories, Requests for Admission and Requests for Production of Documents yesterday and in order to comply with deadlines for witness list (which still is depending on the Motion for Electronic Hearing and the timeline for contacting and receiving responses from possible participants) and Discovery, I spent all of yesterday afternoon, night and the next morning answering these. Just now, my kids brought me in a Fedex package with a "First Corrected set of Interrogatories, etc." I now have the added burden of reviewing side by side the two sets of questions to see if my answers would match in order to answer the Corrected set properly, or starting from scratch with the Corrected set. I offer this letter as further proof that my Motion for Continuance should be granted especially in light of this added unnecessary burden. Thank you. Lee Halper

Young, Norm wrote:

> Lee: A hard copy of your e-mail has been forwarded to Mr. Saxton. NCY

RECEIVED
MAY 24 1999
Department of Water Resources
Southern Region

Subject:
5/20 GIVENS PURSLEY LETTER T 5401 & 5436
Date:
Fri, 21 May 1999 12:14:01 -0600
From:
slvrchst@magiclink.com
To:
allen merritt <amerritt@idwr.state.id.us>, norm young <nyoung@idwr.state.id.us>

Dear Allen and Norm,
NOTE: Norm, this letter is for L. Glen Saxton if you'd kindly pass it on to him.
This letter will go out today regular mail to all parties in these Transfer Protests.

I received a copy of a letter today from Chris Meyer to Mr. Merritt and Mr. Saxton and felt the need to immediately reply as I felt it could affect my Motion for Continuance. I will reference by page and paragraph in the hope that the format of the letter was the same to all recipients.

Page 1, paragraph 3. Mr. Merritt is doing the difficult job of trying to accommodate all parties in finding a date for the preconference hearing for Transfer 5436. In stating that this is unacceptable to Jerome Cheese, Mr. Meyer does not state but allows for presumption that this in some way harms Jerome Cheese. As I have stated before, Jerome Cheese has adequate water to operate its business and can in no way be harmed by a process that allows enough time to fully and adequately address the issues. If there were harm, I would like to see the qualifications of that harm.

Page 2, paragraph 1. Mr. Meyers proposal of a combined hearing is ludicrous in that the geological, hydrogeological and 42-222 issues are completely separate and different between T 5401 and 5436. In addition, this would be asking the Protestants of 5436 (other than Bill and I) to sacrifice their time and money during the time that 5401 is being litigated.

Page 2, paragraph 2. In his second sentence, Mr. Meyer offers a fact but no evidence of harm, again. Because of his Response in Opposition to Motion for Order Allowing Electronic Hearing, I am issuing a Response to his Response next week. In terms of an electronic hearing for a preconference hearing, the whole idea of an electronic hearing is to supply experts and witnesses and this is not necessary for a preconference hearing.

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MAY 24 1999
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Conley Ward
Stephania C. Westermeier
Robert B. White

Raymond D. Givens
James A. McClure
OF COUNSEL

May 20, 1999

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

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

Re: In the Matter of Application of Jerome Cheese Company For Water Right Transfer No. 5401 of Water Right No. X36-07337E
Our File No. 5472-1

Dear Messrs. Chisholm and Halper:

I am enclosing a first corrected set of discovery requests (dated May 20, 1999) for each of you, along with a copy of the set of identical requests to the other Protestant. These discovery requests supercede the set I mailed to you yesterday, which I discovered contained computer errors in the cross referencing of items. The May 20, 1999 version also supercedes the proposed discovery responses which were supplied to the Idaho Department of Water Resources prior to the prehearing conference. In other words, you need only respond to the May 20, 1999 set. I apologize for any confusion this may have caused.

I have not heard from either of you since my letter of May 10, 1999 regarding settlement discussions. If you have any interest in pursuing those ideas, or any others, please do not hesitate to give me—or anyone at Jerome Cheese Company—a call. We would be pleased to assist in facilitating a serious public forum for discussion of the public policy issues you have raised, if that can be done in a context other than a costly and divisive battle over these water transfers.

MICROFILMED

Sincerely,

Christopher H. Meyer

cc: Glen Saxton, IDWR (w/o enclosures)
Allen Merritt, IDWR (w/ enclosures)
Jon Davis, Jerome Cheese Company (w/enclosures)
Rex Minchey, Jerome Cheese Company (w/enclosures)
Michael Creamer, Givens Pursley (w/enclosures)

CHM:baf
S:\Clients\5472\1\Corr\1999-05-20 CHM Ltr to B.Chisholm & L.Halper - Re corrected discovery.wpd

Glen

Young, Norm

From: slvrchst@magiclink.com
Sent: Friday, May 21, 1999 3:59 PM
To: Young, Norm
Subject: Re: 5/20 GIVENS PURSLEY LETTER T 5401 & 5436

Dear Norm,
Thank you for your help. Please also forward this letter to Mr. Saxton
A problem has arisen which is not of my doing which may also affect my
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tomorrow. I received the Applicant's first set of Interrogatories,
Requests for Admission and Requests for Production of Documents yesterday
and in order to comply with deadlines for witness list (which still is
depending on the Motion for Electronic Hearing and the timeline for
contacting and receiving responses from possible participants) and
Discovery, I spent all of yesterday afternoon, night and the next morning
answering these. Just now, my kids brought me in a Fedex package with a
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of reviewing side by side the two sets of questions to see if my answers
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my Motion for Continuance should be granted especially in light of this
added unnecessary burden. Thank you. Lee Halper

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MICROFILMED

Young, Norm

From: slvrchst@magiclink.com
Sent: Friday, May 21, 1999 12:14 PM
To: allen merritt; norm young
Subject: 5/20 GIVENS PURSLEY LETTER T 5401 & 5436

Dear Allen and Norm,
NOTE: Norm, this letter is for L. Glen Saxton if you'd kindly pass it on to him.
This letter will go out today regular mail to all parties in these Transfer Protests.

I received a copy of a letter today from Chris Meyer to Mr. Merritt and Mr. Saxton and felt the need to immediately reply as I felt it could affect my Motion for Continuance. I will reference by page and paragraph in the hope that the format of the letter was the same to all recipients.

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Page 2, paragraph 3. In this, Mr. Meyer dismisses Mr. Ihler and Ms. Thornborrow as valueless without hearing their concerns. If he had done this to me, I would have taken offense.

Page 2, paragraph 4. As Mr. Meyer has not received my answers to his Discovery, I cannot see how he can say the public interest issues are the same for both transfers. Even if he had received my answers, for him to imply that they will be the same for both is presumptuous, at best. I sense only that Mr. Meyer wants a reduction in the evidence, all evidence, and not a full and open process.

Page 2, paragraph 5. Mr. Meyer does not state what the 'substantial concession' is that Jerome Cheese is making, nor does he list the costs to the Company for delay or associated planning issues other than the costs I perceive to be the burden and cost of his letter.

Page 3, paragraph 1. Mr. Meyers confidence is unbounded especially as he has not seen my responses to Discovery or the burden of my Discovery. I covet his overtime pay borne of his vigorous objections.

Thank you for your consideration.
Sincerely,
Lee Halper

MICROFILM

GIVENS PURSLEY LLP

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277 North 6th Street, Suite 200
PO Box 2720, Boise, Idaho 83701
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James A. McClure
OF COUNSEL

May 20, 1999

RECEIVED
MAY 21 1999
Department of Water Resources
Southern Region

Via Facsimile and U.S. Mail

Allen D. Merritt, P.E.
Southern Regional Manager
Idaho Department of Water Resources
1341 Fillmore St., Ste. 200
Twin Falls, ID 83301-3380

Mr. L. Glen Saxton
Hearing Officer
Idaho Department of Water Resources
1301 N. Orchard
Statehouse Mail
Boise, ID 83720-9000

Re: Jerome Cheese Company
Water Transfer Nos. 5401 and 5436
Our File No. 5472-1

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---

[1] I am now polling our expert witnesses to determine which exact dates are available.

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This concession is contingent upon moving forward without unreasonable delay on both cases. If this proposal is not acceptable, then Jerome Cheese Company is prepared to move forward with the June 8 hearing with Transfer 5401 on a separate track. Indeed, if these cases cannot be consolidated in a manner which allows them to move forward to hearing in July, then Jerome Cheese Company will vigorously object to any delay of the Transfer 5401 proceeding.

I thank you each for your cooperation and assistance in moving these matters forward with maximum efficiency for all concerned. I look forward to hearing from you at your earliest convenience.

Sincerely,

Christopher H. Meyer

cc: Charles E. Brockway, Brockway Engineering
William K. Chisholm, Protestant
Michael C. Creamer, Givens Pursley
Jon Davis, Jerome Cheese Company
Lee J. Halper, Protestant
Craig D. Hobdey, Hobdey & Hobdey
Paul K. Hunter, EnviroSearch International
Michael Ihler, Protestant
Richard K. Kelsey, EnviroSearch International
J. Rex Minchey, Jerome Cheese Company
Darcy Thornborrow, Protestant

CHM:baf
S:\Clients\5472\1\Corr\1999-05-20 CHM Ltr to G.Saxton & A.Merritt - Re scheduling.wpd

GIVENS PURSLEY LLP

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OF COUNSEL

May 20, 1999

RECEIVED
MAY 21 1999
Department of Water Resources
Southern Region

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

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

Re: In the Matter of Application of Jerome Cheese Company For Water Right Transfer No. 5401 of Water Right No. X36-07337E
Our File No. 5472-1

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Sincerely,

Christopher H. Meyer

cc: Glen Saxton, IDWR (w/o enclosures)
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Rex Minchey, Jerome Cheese Company (w/enclosures)
Michael Creamer, Givens Pursley (w/enclosures)

CHM:baf
S:\Clients\5472\1\Corr\1999-05-20 CHM Ltr to B.Chisholm & L.Halper - Re corrected discovery.wpd

MICROFILMED

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

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

RECEIVED
MAY 21 1999
Department of Water Resources
Southern Region

BEFORE THE
IDAHO DEPARTMENT OF WATER RESOURCES

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

Jerome Cheese Company,
Applicant

William K. Chisholm,
Lee J. Halper,
Protestants

APPLICANT JEROME CHEESE COMPANY'S FIRST CORRECTED SET OF INTERROGATORIES, REQUESTS FOR ADMISSION AND REQUESTS FOR PRODUCTION OF DOCUMENTS DIRECTED TO PROTESTANT WILLIAM K. CHISHOLM

TO: PROTESTANT WILLIAM K. CHISHOLM:

YOU WILL PLEASE TAKE NOTICE that Applicant Jerome Cheese Company requests your sworn responses to the following Interrogatories, Requests for Admission and Requests for Production of Documents. These are due no later than fifteen (15) days from the service hereof in conformance with the Idaho Rules of Civil Procedure or such

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other time as the Hearing Officer may specify.

I. INSTRUCTIONS

A. Your obligation to find the information sought

In responding to these Interrogatories, Requests for Admission and Requests for Production of Documents, you must diligently search all records, files, documents, and materials in your possession or available to you or your representatives, and then furnish all responsive information available to you, including information possessed by your employees, officers, directors, agents and attorneys, if any, and any investigators, experts, etc., retained by you or your attorneys. In other words, you must provide responsive information beyond that which is personally known to you.

B. Your obligation to be clear and complete

If an interrogatory or request for admission has subparts or contains a compound question, do not simply limit your answer to a negative response to the interrogatory or request for admission as a whole. Rather, you must answer each part separately and in full.

If for any reason you are unable to answer an interrogatory in full, you must answer to the fullest extent possible, specify the reason for your inability to answer the remainder, and state whatever information and knowledge you have regarding the

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unanswered portion.

With respect to requests for admissions, if you believe part of the statement is true, but are unable to admit another part of the statement, do not deny the entire request for admission. Rather, identify that part of the statement which you are able to admit and that part which you cannot. If you do not have sufficient information to admit or deny a particular statement, or part there of, do not simply deny the statement, but instead state that you have made reasonable inquiry into the facts but still have insufficient knowledge.

C. Your obligation to identify documents

In addition to supplying the information requested in each interrogatory, you are required to identify and describe all documents to which you refer in preparing your answers.

Whenever you are asked to identify or describe a document, your description should include, but not be limited to, the following:

1. The name, address, telephone number, occupation, job title, employer of the custodian of the documents;

2. The date of the making of the document and the name, address, telephone number, occupation, job title and employer of each person whose testimony could be used to authenticate such document and lay the foundation for its introduction into evidence.

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D. Your continuing obligation

These discovery requests are deemed continuing. This means that if any of your answers change, if you become aware of new information, or if you become aware of documents (whether new or old) which are responsive to these discovery requests at any time before the final conclusion of this matter, you are automatically obligated to promptly disclose the same to the Applicant. This is true whether or not you have been asked by any person to update your answers and responses.

E. Sanctions

The Idaho Rules of Civil Procedure provide substantial financial and other sanctions against you if you fail to timely comply with discovery requests or if you provide answers which are false, misleading, deceptive, inaccurate or incomplete. Moreover, failure to make admissions which are later proved may result in the imposition of attorney fees against you.

F. Headings

The outline headings contained in this document are provided solely for the convenience of the reader to provide a sense of organization. They are not intended to be incorporated into any discovery request. Nor are they intended to limit or modify any of the Interrogatories, Requests for Admission, or Requests for Production contained herein.

In a similar vein, certain words have been emphasized with italics in order to assist the reader in reviewing this document and locating particular items. Such emphasis is not intended to change the meaning of the discovery request.

G. Definitions

Unless otherwise indicated, the following definitions will be utilized with respect to these Interrogatories, Requests for Admission, and Requests for Production:

1. "Documents" means and includes any and all tangible things and documents, whether written, recorded, graphic, typewritten, printed, photocopies, carbon copies or otherwise visually reproduced including, but not limited to, papers, agreements, contracts, letters, cables, wires, notes, memoranda, correspondence, prior drafts, telegrams, patents, pleadings, affidavits, depositions, books, reports, pamphlets, studies, minutes, records, accounting books, maps, plans, sketches, charts, drawings, diagrams, photographs, films, assignments, notebooks, ledgers, bills, statements, invoices, checks, receipts, analyses, surveys, transcriptions and recordings, of which you have any knowledge or information, referring, relating or pertaining in any way to the subject matters in connection with which the word "document" is used, and includes but without limitation, all originals, all file copies or reproductions, and all other copies or reproductions, no matter how or by whom prepared, and all drafts prepared in connection with such documents, whether used or not.

2. "Person" shall mean and include a natural person, partnership, corporation or other legal entity together with its principles, agents, employees, representatives and assigns.

II. INTERROGATORIES, REQUESTS FOR ADMISSION AND REQUESTS FOR PRODUCTION OF DOCUMENTS

A. General Issues

ITEM 1 (INTERROGATORY NO. 1)

Please *identify yourself* (the person responding to these discovery requests), and identify each and every person with whom you consulted in preparing these responses.

ITEM 2 (INTERROGATORY NO. 2)

Please state whether you have *read and understood* the instructions and introductory materials provided above.

ITEM 3 (INTERROGATORY NO. 3)

Please *identify each person* known to you or to your attorneys who has or may have knowledge of any fact or expert opinion pertinent or relevant to your Protest of Transfer Application No. 5401. In your answer to this Interrogatory, please include any person who has been retained, hired, or relied upon by you, your agents, or your representatives to review any issues raised by the Application or your Protest to the Application. In your answer, please provide the full name, mailing address, physical address, and phone number of each person identified.

B. Conditions for Approval

ITEM 4 (INTERROGATORY NO. 4)

Do you contend that the Application for Transfer 5401 cannot be approved under any *conditions*?

ITEM 5 (INTERROGATORY NO. 5)

If your answer to the previous interrogatory is anything other than an unqualified "yes," please state each and *every condition* you contend must be required by the Department as part of approval of the Application.

C. Injury and Enlargement

ITEM 6 (REQUEST FOR ADMISSION NO. 1)

Please admit that you *own no water rights*.

ITEM 7 (REQUEST FOR ADMISSION NO. 2)

Please admit that you *own no water rights* which will be injured or otherwise impaired by the proposed Transfer No. 5401.

ITEM 8 (INTERROGATORY NO. 6)

If your response to Item 7 was anything other than an unqualified admission, please identify each water right you own.

ITEM 9 (INTERROGATORY NO. 7)

With respect to each water right identified in response to Item 8 above, please state each and every factual basis by which you contend such water right may be *injured* by the proposed transfer.

ITEM 10 (REQUEST FOR PRODUCTION NO. 1)

If your response to Item 7 was anything other than an unqualified admission, please produce any and all documents which bear upon or provide evidence of potential *injury* to your water right(s).

ITEM 11 (REQUEST FOR ADMISSION NO. 3)

Please admit that proposed Transfer 5401 calls for the transfer only of that quantity of water which corresponds to the *consumptive use* component of the water right which is the subject of Transfer No. 5401.

ITEM 12 (INTERROGATORY NO. 8)

If your response to Item 11 was anything other than an unqualified admission, please explain in full your understanding of the quantity of water which is sought to be transferred, explain how this differs from the quantity of the *consumptive use* component of this right. State each and every fact which you contend supports these conclusions.

ITEM 13 (REQUEST FOR PRODUCTION NO. 2)

If your response to Item 11 was anything other than an unqualified admission, please produce any and all documents which bear upon or provide evidence with respect to the quantity of water sought to be transferred or the measure of *consumptive use*.

ITEM 14 (REQUEST FOR ADMISSION NO. 4)

Please admit that the proposed *change in point of diversion* contemplated under Transfer No. 5401 will have no adverse impact on any water rights you own.

ITEM 15 (REQUEST FOR ADMISSION NO. 5)

Please admit that the proposed *change in point of diversion* contemplated under Transfer No. 5401 will have no adverse impact on any other person's water rights.

ITEM 16 (INTERROGATORY NO. 9)

If your response to either Item 14 or Item 15 was anything other than an unqualified admission, please identify each and every water right which may be injured or otherwise impaired by the proposed *change in point of diversion*.

ITEM 17 (REQUEST FOR PRODUCTION NO. 3)

If your response to either Item 14 or Item 15 was anything other than an unqualified admission, please produce any and all documents which bear upon or provide evidence with respect to the impact of *change in point of diversion* on your water rights or

any other water rights.

ITEM 18 (REQUEST FOR ADMISSION NO. 6)

Please admit that the proposed *change in season of use* contemplated under Transfer No. 5401 will have no adverse impact on any water rights you own.

ITEM 19 (REQUEST FOR ADMISSION NO. 7)

Please admit that the proposed *change in season of use* contemplated under Transfer No. 5401 will have no adverse impact on any other person's water rights.

ITEM 20 (INTERROGATORY NO. 10)

If your response to either Item 18 or Item 19 was anything other than an unqualified admission, please identify each and every water right which may be injured or otherwise impaired by the proposed *change in season of use*.

ITEM 21 (REQUEST FOR PRODUCTION NO. 4)

If your response to either Item 18 or Item 19 was anything other than an unqualified admission, please produce any and all documents which bear upon or provide evidence with respect to the impact of *change in season of use* on your water rights or any other water rights.

ITEM 22 (ADMISSION BY APPLICANT—NO RESPONSE REQUIRED)

Applicant Jerome Cheese Company hereby admits that its application for Transfer

No. 5401 is made subject to a "*dry up condition*" whereby the land currently/previously irrigated with water sought to be transferred shall be subject to a condition that, after the transfer, it shall no longer be irrigated pursuant to the transferred portion of the former water right.

ITEM 23 (REQUEST FOR ADMISSION NO. 8)

Please admit that, in light of the above admission (Item 22), and all other circumstances known to you, there is no basis on which to assert that the proposed Transfer No. 5401 will *injure* any other water right.

ITEM 24 (INTERROGATORY NO. 11)

If your response to Item 23 was anything other than an unqualified admission, please identify each and every water right which will be *injured* by the proposed transfer.

ITEM 25 (INTERROGATORY NO. 12)

If your response to Item 23 was anything other than an unqualified admission, please state each and every fact which you contend supports your claim that the proposed Transfer 5401 will *injure* any other water right

ITEM 26 (REQUEST FOR PRODUCTION NO. 5)

If your response to Item 23 was anything other than an unqualified admission, please produce any and all documents which bear upon or provide evidence with respect

to the potential for *injury* to any other water right.

ITEM 27 (REQUEST FOR ADMISSION NO. 9)

Please admit that, in light of the above admission (Item 22), and all other circumstances known to you, there is no basis on which to assert that the proposed Transfer No. 5401 will constitute an *enlargement* of the water right.

ITEM 28 (INTERROGATORY NO. 13)

If your response to Item 27 was anything other than an unqualified admission, please state each and every fact which you contend supports your claim that the proposed Transfer 5401 may constitute an *enlargement* of the water right

ITEM 29 (REQUEST FOR PRODUCTION NO. 6)

If your response to Item 27 was anything other than an unqualified admission, please produce any and all documents which bear upon or provide evidence with respect to the potential *enlargement* of the water right.

D. Conservation of Water

ITEM 30 (REQUEST FOR ADMISSION NO. 10)

Please admit that, in light of the above admission (Item 22), and all other circumstances known to you, there is no basis on which to assert that the proposed Transfer No. 5401 is inconsistent with the *conservation of water*.

ITEM 31 (INTERROGATORY NO. 14)

If your response to Item 30 was anything other than an unqualified admission, please state each and every fact which you contend supports your claim that the proposed Transfer 5401 is inconsistent with the *conservation of water*

ITEM 32 (REQUEST FOR PRODUCTION NO. 7)

If your response to Item 30 was anything other than an unqualified admission, please produce any and all documents which bear upon or provide evidence with respect to the impact of proposed Transfer No. 5401 on the *conservation of water*.

E. Local Public Interest

ITEM 33 (REQUEST FOR ADMISSION NO. 11)

Please admit that, in light of all circumstances known to you, there is no basis on which to assert that the proposed Transfer No. 5401 is not in the *local public interest.*

ITEM 34 (INTERROGATORY NO. 15)

To the extent your response to Item 33 is anything other than an unqualified admission, please:

a. state each and every aspect of the *local public interest* that you contend would be adversely affected by the Application;

b. Identify each and every theory, claim, fact or defense upon which you contend the approval of the Application would not be in the *local public interest.*

ITEM 35 (REQUEST FOR PRODUCTION NO. 8)

If your response to Item 33 was anything other than an unqualified admission, please produce any and all documents which bear upon or provide evidence with respect to the impact of proposed Transfer No. 5401 on the *local public interest.*

ITEM 36 (REQUEST FOR ADMISSION NO. 12)

Please admit that a *primary basis* for your opposition to this Transfer is your concern about the impact of public policies facilitating or failing to properly regulate confined animal feeding operations on the quality of life in the Magic Valley.

ITEM 37 (REQUEST FOR ADMISSION NO. 13)

Please admit that a *primary motivation or goal* for your filing your Protest is to draw public attention to these concerns (about the impact of public policies facilitating or failing to properly regulate Confined Animal Feeding Operations on the quality of life in the Magic Valley).

ITEM 38 (INTERROGATORY NO. 16)

If your response to either of the previous two requests for admission was anything other that an unqualified admission, please state in your own words the *primary basis, goal, and motivation* for your Protest.

ITEM 39 (REQUEST FOR ADMISSION NO. 14)

Please admit that Jerome Cheese Company does not *own any dairy animals* in connection with its cheese production operation in the state of Idaho.

ITEM 40 (REQUEST FOR ADMISSION NO. 15)

Please admit that Jerome Cheese Company is not now nor has in the past been in violation of any federal, state or local *environmental regulation*, permit or standard in connection with its operation in the state of Idaho.

ITEM 41 (INTERROGATORY NO. 17)

If your response to Item 40 was anything other than an unqualified admission, please describe each and every violation, or suspected violation, of any federal, state or local *environmental regulation*, permit or standard by Jerome Cheese Company.

ITEM 42 (REQUEST FOR PRODUCTION NO. 9)

If your response to Item 40 was anything other than an unqualified admission, please produce any and all documents which bear upon or provide evidence of each and every such violation, or suspected violation, of any federal, state or local *environmental regulation*, permit or standard by Jerome Cheese Company.

ITEM 43 (REQUEST FOR ADMISSION NO. 16)

Please admit that Jerome Cheese Company contributes substantially and positively

to the *economy* of Jerome, Idaho.

F. Concluding Items

ITEM 44 (INTERROGATORY NO. 18)

Please state each and every *theory, claim, fact or defense* upon which you rely as a basis for your Protest to the Application, which has not been disclosed in response to the above Items.

ITEM 45 (INTERROGATORY NO. 19)

Please identify every *document* of which you are aware that supports or tends to support your answers to each of the above interrogatories and requests for admission which has not already been identified or produced.

Dated this 20th day of May, 1999.

GIVENS PURSLEY LLP

By _____
Christopher H. Meyer

Attorneys for Applicant
Jerome Cheese Company

CERTIFICATE OF SERVICE

I hereby certify that on May 20, 1999 I caused to be served a true and correct copy of the foregoing to each of the persons named below by the method indicated below each of their names.

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

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

Christopher H. Meyer

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

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

RECEIVED
MAY 21 1999
Department of Water Resources
Southern Region

BEFORE THE
IDAHO DEPARTMENT OF WATER RESOURCES

In the Matter of Application For Transfer No. 5401 (Water Right No. X36-07337E) Jerome Cheese Company, Applicant William K. Chisholm, Lee J. Halper, Protestants	**APPLICANT JEROME CHEESE COMPANY'S FIRST CORRECTED SET OF INTERROGATORIES, REQUESTS FOR ADMISSION AND REQUESTS FOR PRODUCTION OF DOCUMENTS DIRECTED TO PROTESTANT LEE J. HALPER**

TO: PROTESTANT LEE J. HALPER:

YOU WILL PLEASE TAKE NOTICE that Applicant Jerome Cheese Company requests your sworn responses to the following Interrogatories, Requests for Admission and Requests for Production of Documents. These are due no later than fifteen (15) days from the service hereof in conformance with the Idaho Rules of Civil Procedure or such

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other time as the Hearing Officer may specify.

I. INSTRUCTIONS

A. Your obligation to find the information sought

In responding to these Interrogatories, Requests for Admission and Requests for Production of Documents, you must diligently search all records, files, documents, and materials in your possession or available to you or your representatives, and then furnish all responsive information available to you, including information possessed by your employees, officers, directors, agents and attorneys, if any, and any investigators, experts, etc., retained by you or your attorneys. In other words, you must provide responsive information beyond that which is personally known to you.

B. Your obligation to be clear and complete

If an interrogatory or request for admission has subparts or contains a compound question, do not simply limit your answer to a negative response to the interrogatory or request for admission as a whole. Rather, you must answer each part separately and in full.

If for any reason you are unable to answer an interrogatory in full, you must answer to the fullest extent possible, specify the reason for your inability to answer the remainder, and state whatever information and knowledge you have regarding the

unanswered portion.

With respect to requests for admissions, if you believe part of the statement is true, but are unable to admit another part of the statement, do not deny the entire request for admission. Rather, identify that part of the statement which you are able to admit and that part which you cannot. If you do not have sufficient information to admit or deny a particular statement, or part there of, do not simply deny the statement, but instead state that you have made reasonable inquiry into the facts but still have insufficient knowledge.

C. Your obligation to identify documents

In addition to supplying the information requested in each interrogatory, you are required to identify and describe all documents to which you refer in preparing your answers.

Whenever you are asked to identify or describe a document, your description should include, but not be limited to, the following:

1. The name, address, telephone number, occupation, job title, employer of the custodian of the documents;

2. The date of the making of the document and the name, address, telephone number, occupation, job title and employer of each person whose testimony could be used to authenticate such document and lay the foundation for its introduction into evidence.

D. Your continuing obligation

These discovery requests are deemed continuing. This means that if any of your answers change, if you become aware of new information, or if you become aware of documents (whether new or old) which are responsive to these discovery requests at any time before the final conclusion of this matter, you are automatically obligated to promptly disclose the same to the Applicant. This is true whether or not you have been asked by any person to update your answers and responses.

E. Sanctions

The Idaho Rules of Civil Procedure provide substantial financial and other sanctions against you if you fail to timely comply with discovery requests or if you provide answers which are false, misleading, deceptive, inaccurate or incomplete. Moreover, failure to make admissions which are later proved may result in the imposition of attorney fees against you.

F. Headings

The outline headings contained in this document are provided solely for the convenience of the reader to provide a sense of organization. They are not intended to be incorporated into any discovery request. Nor are they intended to limit or modify any of the Interrogatories, Requests for Admission, or Requests for Production contained herein.

In a similar vein, certain words have been emphasized with italics in order to assist the reader in reviewing this document and locating particular items. Such emphasis is not intended to change the meaning of the discovery request.

G. Definitions

Unless otherwise indicated, the following definitions will be utilized with respect to these Interrogatories, Requests for Admission, and Requests for Production:

1. "Documents" means and includes any and all tangible things and documents, whether written, recorded, graphic, typewritten, printed, photocopies, carbon copies or otherwise visually reproduced including, but not limited to, papers, agreements, contracts, letters, cables, wires, notes, memoranda, correspondence, prior drafts, telegrams, patents, pleadings, affidavits, depositions, books, reports, pamphlets, studies, minutes, records, accounting books, maps, plans, sketches, charts, drawings, diagrams, photographs, films, assignments, notebooks, ledgers, bills, statements, invoices, checks, receipts, analyses, surveys, transcriptions and recordings, of which you have any knowledge or information, referring, relating or pertaining in any way to the subject matters in connection with which the word "document" is used, and includes but without limitation, all originals, all file copies or reproductions, and all other copies or reproductions, no matter how or by whom prepared, and all drafts prepared in connection with such documents, whether used or not.

2. "Person" shall mean and include a natural person, partnership, corporation or other legal entity together with its principles, agents, employees, representatives and assigns.

II. INTERROGATORIES, REQUESTS FOR ADMISSION AND REQUESTS FOR PRODUCTION OF DOCUMENTS

A. General Issues

ITEM 1 (INTERROGATORY NO. 1)

Please *identify yourself* (the person responding to these discovery requests), and identify each and every person with whom you consulted in preparing these responses.

ITEM 2 (INTERROGATORY NO. 2)

Please state whether you have *read and understood* the instructions and introductory materials provided above.

ITEM 3 (INTERROGATORY NO. 3)

Please *identify each person* known to you or to your attorneys who has or may have knowledge of any fact or expert opinion pertinent or relevant to your Protest of Transfer Application No. 5401. In your answer to this Interrogatory, please include any person who has been retained, hired, or relied upon by you, your agents, or your representatives to review any issues raised by the Application or your Protest to the Application. In your answer, please provide the full name, mailing address, physical address, and phone number of each person identified.

B. Conditions for Approval

ITEM 4 (INTERROGATORY NO. 4)

Do you contend that the Application for Transfer 5401 cannot be approved under any *conditions*?

ITEM 5 (INTERROGATORY NO. 5)

If your answer to the previous interrogatory is anything other than an unqualified "yes," please state each and *every condition* you contend must be required by the Department as part of approval of the Application.

C. Injury and Enlargement

ITEM 6 (REQUEST FOR ADMISSION NO. 1)

Please admit that you *own no water rights*.

ITEM 7 (REQUEST FOR ADMISSION NO. 2)

Please admit that you *own no water rights* which will be injured or otherwise impaired by the proposed Transfer No. 5401.

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If your response to Item 7 was anything other than an unqualified admission, please identify each water right you own.

ITEM 9 (INTERROGATORY NO. 7)

With respect to each water right identified in response to Item 8 above, please state each and every factual basis by which you contend such water right may be *injured* by the proposed transfer.

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Please admit that proposed Transfer 5401 calls for the transfer only of that quantity of water which corresponds to the *consumptive use* component of the water right which is the subject of Transfer No. 5401.

ITEM 12 (INTERROGATORY NO. 8)

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If your response to Item 11 was anything other than an unqualified admission, please produce any and all documents which bear upon or provide evidence with respect to the quantity of water sought to be transferred or the measure of *consumptive use*.

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Please admit that the proposed *change in point of diversion* contemplated under Transfer No. 5401 will have no adverse impact on any water rights you own.

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Please admit that the proposed *change in point of diversion* contemplated under Transfer No. 5401 will have no adverse impact on any other person's water rights.

ITEM 16 (INTERROGATORY NO. 9)

If your response to either Item 14 or Item 15 was anything other than an unqualified admission, please identify each and every water right which may be injured or otherwise impaired by the proposed *change in point of diversion.*

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Please admit that the proposed *change in season of use* contemplated under Transfer No. 5401 will have no adverse impact on any water rights you own.

ITEM 19 (REQUEST FOR ADMISSION NO. 7)

Please admit that the proposed *change in season of use* contemplated under Transfer No. 5401 will have no adverse impact on any other person's water rights.

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If your response to either Item 18 or Item 19 was anything other than an unqualified admission, please identify each and every water right which may be injured or otherwise impaired by the proposed *change in season of use.*

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Applicant Jerome Cheese Company hereby admits that its application for Transfer No. 5401 is made subject to a "*dry up condition*" whereby the land currently/previously irrigated with water sought to be transferred shall be subject to a condition that, after the transfer, it shall no longer be irrigated pursuant to the transferred portion of the former water right.

ITEM 23 (REQUEST FOR ADMISSION NO. 8)

Please admit that, in light of the above admission (Item 22), and all other circumstances known to you, there is no basis on which to assert that the proposed Transfer No. 5401 will *injure* any other water right.

ITEM 24 (INTERROGATORY NO. 11)

If your response to Item 23 was anything other than an unqualified admission, please identify each and every water right which will be *injured* by the proposed transfer.

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If your response to Item 23 was anything other than an unqualified admission, please produce any and all documents which bear upon or provide evidence with respect to the potential for *injury* to any other water right.

ITEM 27 (REQUEST FOR ADMISSION NO. 9)

Please admit that, in light of the above admission (Item 22), and all other circumstances known to you, there is no basis on which to assert that the proposed

Transfer No. 5401 will constitute an *enlargement* of the water right.

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D. Conservation of Water

ITEM 30 (REQUEST FOR ADMISSION NO. 10)

Please admit that, in light of the above admission (Item 22), and all other circumstances known to you, there is no basis on which to assert that the proposed Transfer No. 5401 is inconsistent with the *conservation of water*.

ITEM 31 (INTERROGATORY NO. 14)

If your response to Item 30 was anything other than an unqualified admission, please state each and every fact which you contend supports your claim that the proposed Transfer 5401 is inconsistent with the *conservation of water*

ITEM 32 (REQUEST FOR PRODUCTION NO. 7)

If your response to Item 30 was anything other than an unqualified admission, please produce any and all documents which bear upon or provide evidence with respect to the impact of proposed Transfer No. 5401 on the *conservation of water*.

E. Local Public Interest

ITEM 33 (REQUEST FOR ADMISSION NO. 11)

Please admit that, in light of all circumstances known to you, there is no basis on which to assert that the proposed Transfer No. 5401 is not in the *local public interest*.

ITEM 34 (INTERROGATORY NO. 15)

To the extent your response to Item 33 is anything other than an unqualified admission, please:

a. state each and every aspect of the *local public interest* that you contend would be adversely affected by the Application;

b. Identify each and every theory, claim, fact or defense upon which you contend the approval of the Application would not be in the *local public interest*.

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Please admit that a *primary basis* for your opposition to this Transfer is your concern about the impact of public policies facilitating or failing to properly regulate confined animal feeding operations on the quality of life in the Magic Valley.

ITEM 37 (REQUEST FOR ADMISSION NO. 13)

Please admit that a *primary motivation or goal* for your filing your Protest is to draw public attention to these concerns (about the impact of public policies facilitating or failing to properly regulate Confined Animal Feeding Operations on the quality of life in the Magic Valley).

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If your response to either of the previous two requests for admission was anything other that an unqualified admission, please state in your own words the *primary basis, goal, and motivation* for your Protest.

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Please admit that Jerome Cheese Company does not *own any dairy animals* in connection with its cheese production operation in the state of Idaho.

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Please admit that Jerome Cheese Company is not now nor has in the past been in

violation of any federal, state or local *environmental regulation*, permit or standard in connection with its operation in the state of Idaho.

ITEM 41 (INTERROGATORY NO. 17)

If your response to Item 40 was anything other than an unqualified admission, please describe each and every violation, or suspected violation, of any federal, state or local *environmental regulation*, permit or standard by Jerome Cheese Company.

ITEM 42 (REQUEST FOR PRODUCTION NO. 9)

If your response to Item 40 was anything other than an unqualified admission, please produce any and all documents which bear upon or provide evidence of each and every such violation, or suspected violation, of any federal, state or local *environmental regulation*, permit or standard by Jerome Cheese Company.

ITEM 43 (REQUEST FOR ADMISSION NO. 16)

Please admit that Jerome Cheese Company contributes substantially and positively to the *economy* of Jerome, Idaho.

F. Concluding Items

ITEM 44 (INTERROGATORY NO. 18)

Please state each and every *theory, claim, fact or defense* upon which you rely as a

basis for your Protest to the Application, which has not been disclosed in response to the above Items.

ITEM 45 (INTERROGATORY NO. 19)

Please identify every *document* of which you are aware that supports or tends to support your answers to each of the above interrogatories and requests for admission which has not already been identified or produced.

Dated this 20th day of May, 1999.

GIVENS PURSLEY LLP

By _____
Christopher H. Meyer

Attorneys for Applicant
Jerome Cheese Company

CERTIFICATE OF SERVICE

I hereby certify that on May 20, 1999 I caused to be served a true and correct copy of the foregoing to each of the persons named below by the method indicated below each of their names.

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

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

Christopher H. Meyer

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MAY 21 1999
Department of Water Resources

ORIGINAL

Christopher H. Meyer, Esq. Email: chm@givenspursley.com
Michael C. Creamer, Esq. Email: mcc@givenspursley.com
GIVENS PURSLEY LLP Office: 208-388-1200
277 North 6th Street, Suite 200 Fax: 208-388-1300
P.O. Box 2720
Boise, Idaho 83701-2720
Counsel for Applicant Jerome Cheese Company

BEFORE THE
IDAHO DEPARTMENT OF WATER RESOURCES

In the Matter of Application For Transfer No. 5401 (Water Right No. X36-07337E) Jerome Cheese Company, Applicant William K. Chisholm, Lee J. Halper, Protestants	**APPLICANT JEROME CHEESE COMPANY'S FIRST NOTICE OF SERVING DISCOVERY**

COMES NOW Applicant Jerome Cheese Company by and through its attorneys and provides this notice of service of discovery. This notice is provided pursuant to Idaho R. Civ. Pro. 33(a)(5) (interrogatories), Idaho R. Civ. Pro. 34(d) (requests for production), and Idaho R. Civ. Pro. 36(c) (requests for admission). These rules are applicable to this contested case per IDAPA 37.01.01.520.02.

The following discovery has been served:

On William K. Chisholm:

1. *Applicant Jerome Cheese Company's First Corrected Set of*

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Interrogatories, Requests for Admission And Requests For Production of Documents Directed to Protestant William K. Chisholm (dated May 20, 1999)

On Lee J. Halper:

1. *Applicant Jerome Cheese Company's First Corrected Set of Interrogatories, Requests for Admission And Requests For Production of Documents Directed to Protestant Lee J. Halper* (dated May 20, 1999)

Dated this 20th day of May, 1999.

GIVENS PURSLEY LLP

By _____
Christopher H. Meyer

Attorneys for Applicant
Jerome Cheese Company

MICROFILMED

CERTIFICATE OF SERVICE

I hereby certify that on May 20, 1999 I caused to be served a true and correct copy of the foregoing to each of the persons named below by the method indicated below each of their names.

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

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

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

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

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

Christopher H. Meyer

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RECEIVED
MAY 19 1999
Department of Water Resources

Christopher H. Meyer, Esq. Email: chm@givenspursley.com
Michael C. Creamer, Esq. Email: mcc@givenspursley.com
GIVENS PURSLEY LLP Office: 208-388-1200
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P.O. Box 2720
Boise, Idaho 83701-2720
Counsel for Applicant Jerome Cheese Company

BEFORE THE
IDAHO DEPARTMENT OF WATER RESOURCES

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

Jerome Cheese Company,
Applicant

William K. Chisholm,
Lee J. Halper,
Protestants

RESPONSE IN OPPOSITION TO MOTION FOR ORDER ALLOWING ELECTRONIC HEARING

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CERTIFICATE OF SERVICE

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INTRODUCTION

COMES NOW Jerome Cheese Company, by and through its counsel of record, and files this objection to the *Motion for Order Allowing Electronic Hearing* filed by Protestants Lee J. Halper and William K. Chisholm[1] dated May 12, 1999.

The motion requests that the hearing in this matter be conducted by way of "telephone or television or other electronic means" pursuant to IDAPA 37.01.01.552 and Idaho Code § 67-5242(3)(e). Applicant Jerome Cheese Company opposes this motion. In support of its opposition, Jerome Cheese Company offers the following argument:

ARGUMENT

I. The rule authorizing electronic hearings does not create any rights to such hearings but instead requires the Department to exercise sound discretion.

The Department's rules (IDAPA 37.01.01.252) and the Idaho Administrative Procedure Act (Idaho Code § 67-5242(3)(e)) each recite the same authority for state agencies to conduct hearings by electronic means.[2] By the plain terms of the rule, no

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[1]The motion states that it is on behalf of both Lee J. Halper and William K. Chisholm, and we accept it as such. However, Mr. Chisholm did not sign the motion and is not represented by Mr. Halper.

[2]The Attorney General's procedural rules contain an identical provision on electronic hearings, IDAPA 04.11.01.252. However, these rules have not been adopted by the Department. IDAPA 37.01.01.050. In any event, the Attorney General's electronic hearing rule does not appear to offer any new or different perspective on the issue.

party has a right to an electronic hearing. Rather, the question of whether such informal means should be employed is left to the Department.

II. The Protestants offers no reason whatsoever for the electronic conference.

The Protestants' request is accompanied by no explanation or supporting documentation whatsoever. For instance, the Protestants do not say—even generically—who might be appearing via electronic means.[3] The Protestants do not explain why their witnesses are unable to attend in person.[4] The Protestants do not say why some other witness, more conveniently located, might not be able to provide expert testimony. Finally, and most significantly, the Protestants do not explain why a witness located out of state (apparently) is in a position to comment on the "local public interest."

Having failed to offer any basis for the request whatsoever, the Protestants' request should be rejected out of hand.

---

[3]At the prehearing conference, the Protestants indicated that such a request would be aimed at expert witnesses, but the motion identifies none, and is not so limited.

[4]At the prehearing conference, the Protestants stated that their witnesses are well and able to travel, but that doing so would be "expensive." The Protestants have made no effort to quantify the cost in even the most rudimentary fashion. Nor have the Protestants offered any similar concern about the very substantial costs they have placed on the Applicant. Indeed, the Protestants were forthright in their statements at the prehearing conference that they seek to inflict financial pain on this and other water right applicants in order to open up the political process.

Moreover, the Protestants should not be accorded an opportunity to offer afterthoughts to justify their request at this time. The proper time to support a motion is at the time of filing the motion. The movant should not be allowed to sit back and see how other parties respond and only then offer the "real" reason for the motion. Such a practice wastes the Department's time, adds to the costs and confusion of administrative litigation and, if allowed to continue, may constitute a denial of due process to other parties by frustrating their ability to respond effectively.

III. The rule allowing electronic hearings is primarily for the benefit of the applicant.

It is generally the practice of the Department to allow use of electronic means as a benefit or convenience to the applicant, when not objected to by other parties or the Department. In other words, the rule allows the Department to employ less formal procedure where desired by the applicant. As a matter of practice, electronic hearings are not ordinarily forced on an applicant. Indeed, to do so would raise due process questions which may be avoided by holding an ordinary, live hearing.

IV. The Department's discretion to allow electronic hearings is limited.

By its plain terms, the electronic hearing rule calls upon the Department to exercise discretion in employing such means. That discretion is not absolute, however. Our Supreme Court made clear in *Dey v. Edward G. Smith and Assoc., Inc.*, 110 Idaho

946, 719 P.2d 1206 (1986),[5] that employing electronic communication where it is not suited may constitute reversible error:

> We recognize the desirability of telephone conference calls as a means of holding hearings in a large number of cases as an expedient and economic resolution of issues from the standpoint of both the parties and the Department of Employment. However, in the instant case, after a review of the record we conclude that the telephone hearing did not provide a complete or orderly basis for the resolution of the dispute. Our review indicates that on several occasions there were disconnections, either deliberate or inadvertent, and that at times the proceedings were heated, argumentative, interrupted, and in effect the appeals examiner lost any control of the situation.

719 P.2d at 1208.

V. The rule is intended for simple proceedings, and is particularly inappropriate for the taking of third party testimony.

As *Dey v. Edward G. Smith and Assoc., Inc.* makes clear, electronic hearings are ill suited for hearings that are "heated" and "argumentative." In other words, such hearings are better suited to addressing procedural and preliminary matters (e.g., setting time tables, bounds for discovery, and perhaps even prehearing conferences) and simple

[5]Although the case deals with the predecessor to the Idaho Administrative Procedure Act ("APA"), it is cited as authority for construction of the current APA provision in the leading article on the subject, Michael S. Gilmore & Dale D. Goble, *The Idaho Administrative Procedure Act: A Primer for the Practitioner*, 30 Idaho L. Rev. 273 (1993).

disputes which do not entail the introduction of evidence and the interrogation of witnesses.

The upcoming contested case in this matter hardly fits that description. The issues as stake in this case are huge, both in an economic sense and in a precedential sense. As the prehearing conference made clear, the Protestants are plowing new ground here, seeking to expand the scope of the public interest review beyond anything seen before in Idaho. By the Protestants' own admission (at the prehearing conference), the reason they seek the electronic hearing is to introduce expert testimony. This is precisely the sort of complex proceeding which is ill suited for electronic communication. Interrogation will be complicated by not having the witness present. The testimony or cross-examination is all but certain to involve maps and other demonstrative materials which cannot be readily marked and manipulated via long distance communication. There are likely to be objections and other procedural wranglings. Moreover, the hearing officer and counsel should not be deprived of the benefit of seeing the witnesses and evaluating their live testimony. In short, the hearing will be far more difficult to administer, and far less effective at getting to the bottom of the complex issues to be raised, if all the parties and witnesses are not in the same room.

VI. This conclusion is supported by the analogous rule of civil procedure.

Idaho Rule of Civil Procedure 7(b)(4) provides an instructive parallel. It authorizes electronic hearings in district court for such matters as "motions," "pretrial

matters" and "orders to show cause." However, the rule expressly provides that "no oral testimony is to be introduced" via electronic hearing. Although not binding on the Department, this rule certainly reinforces the idea that electronic hearings are ill suited for complex contested matters, or any contested matter involving oral testimony.

CONCLUSION

For the reasons stated above, Jerome Cheese Company respectfully urges the Department to deny the Protestants' motion.

DATED This 19th day of May, 1999.

GIVENS PURSLEY LLP

By _____
Christopher H. Meyer

Attorneys for Applicant
Jerome Cheese Company

CERTIFICATE OF SERVICE

I hereby certify that on May 19, 1999 I caused to be served a true and correct copy of the foregoing to each of the persons named below by the method indicated below each of their names.

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

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

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

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

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

Christopher H. Meyer

RECEIVED
MAY 19 1999
Department of Water Resources

Lee J. Halper
331 S 230 W
Jerome, ID 83338
208-324-2240
208-324-4422 fax

BEFORE THE DIRECTOR

IDAHO DEPARTMENT OF WATER RESOURCES

In the Matter of Application of Jerome Cheese Company for Water Right Transfer Number 5401	Water Right No. X36-07337E AMENDED MOTION FOR ORDER ALLOWING ELECTRONIC HEARING

The Protestant, Lee Halper (Protestant) pursuant to IDAPA 37.01.01.552 and Idaho Statute 67-5242(3e) request that the Department and through its authorized hearing officer in this matter, L. Glen Saxton issue an Order authorizing witnesses to participate by telephone or television or other electronic means.

The grounds for this motion are supported by beneficial experience to the process of the public interest as supported by the attached letter (Exhibit A) from Steve Allread, Director of the Idaho State Department of Environmental Quality. Also, the reduction in costs to all parties and the increased scope of knowledge and expert testimony will serve to gather more relative data and facts which will serve the Department's stated goal of protecting the Waters of the State of Idaho.

The reasons for the Amended Motion are that the Protestant mistakenly included the other Named Protestant in the original Motion for Order Allowing Electronic Hearing and did not include a signature line or a signature. The Protestant is not an Attorney at Law and these errors are based in ignorance and lack of familiarity with proper procedure. A sincere apology is offered.

For the above reasons, Protestant respectfully requests that the Department issue its order allowing the Amended Motion for Electronic Hearing.

Dated this 17th day of May, 1999.

Lee Halper-Protestant

CERTIFICATE OF MAILING

I hereby certify that on the 17th day of May, 1999 a true and correct copy of the foregoing Amended Motion For Order Allowing Electronic Hearing was forwarded with all required charges prepared, upon all parties of record in this proceeding by mailing a copy thereof to:

Lee Halper-Protestant

Christopher H. Meyer
Givens Pursley LLP
PO Box 2720
Boise, ID 83701-2720
208-388-1300 fax

L. Glen Saxton
IDWR
PO Box 83720
Boise, ID 83720-0098
208-327-7866 fax

Bill Chisholm
19073 E. HWY 30
Buhl, ID 83316

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MAY 2 6 1999

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MAY 19 1999
Department of Water Resources

Lee J. Halper
331 S 230 W
Jerome, ID 83338
208-324-2240
208-324-4422 fax

BEFORE THE DIRECTOR

IDAHO DEPARTMENT OF WATER RESOURCES

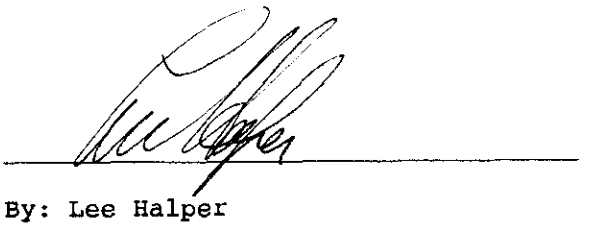
In the Matter of Application of Jerome Cheese Company For Water Rights Transfer No. 5401	Water Right No. X36-07337E MOTION TO CONTINUE HEARING

COMES NOW Lee Halper, Protestant in the above-mentioned case and pursuant to IDAPA 37.01.01.561 requests the Department and through its authorized Hearing Officer, L. Glen Saxton, to issue an Order to Continue the Hearing in this matter previously set for June 8, 1999.

The grounds for this Motion are that the Protestant does not have sufficient time to notify or make available all interested witnesses; that the burden of Discovery has a large and encompassing scope of information, documents, facts and theories, et cetera; that in the interest of fairness, the Applicant will also be unduly pressured to fully present all Discovery items requested in a manner and scope that the Protestant would feel comfortable with as to the fullness and efficiency of completeness; that sufficient time to issue Subpoenas, if allowed, will not be available; that the possibility that the Protestant may find it necessary to retain Counsel and the time constraints on said Counsel would be burdensome; that no detrimental effects will be ongoing for the Applicant if this Transfer Hearing is continued for the simple fact that the Water applied for will still be there in the near future and no argument or statement has been put forth by the Applicant that time is of the essence.

For the above reasons, Lee Halper respectfully requests that the Department issue its Order allowing a Continuance.

Dated this 17th day of May, 1999



By: Lee Halper

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JUL 26 2000

CERTIFICATE OF MAILING

I hereby certify that on the 17th day of May, 1999 a true and correct copy of the foregoing Motion To Continue Hearing was forwarded with all required charges prepared, upon all parties of record in this proceeding by mailing a copy thereof to:

Lee Halper-Protestant

Christopher H. Meyer
Givens Pursley LLP
PO Box 2720
Boise, ID 83701-2720
208-388-1300 fax

L. Glen Saxton
IDWR
PO Box 83720
Boise, ID 83720-0098
208-327-7866 fax

Bill Chisholm
19073 E. HWY 30
Buhl, ID 83316

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MAY 19 1999
Department of Water Resources

Lee J. Halper
331 S 230 W
Jerome, ID 83338
208-324-2240
208-324-4422 fax

BEFORE THE DIRECTOR

IDAHO DEPARTMENT OF WATER RESOURCES

In the Matter of Application of Jerome Cheese Company for Water Rights Transfer No. 5401	Water Right No. X36-07337E ORDER

A Motion having been presented by Lee Halper, Protestant, to the Department Hearing Officer, L. Glen Saxton, in good cause appearing in the interest of justice, it is hereby,

ORDERED that the hearing previously set for Tuesday, June 8th, 1999 at 9:00 a.m. in the Obenchain Community Room, 264 Main Avenue South, Twin Falls, ID., shall be vacated and reset at _____o'clock a.m./p.m. on the _____day of _____, 1999 to be located at

_____ Twin Falls, ID.

_____

L. Glen Saxton-Department Hearing Officer

Dated this _____day of _____, 1999

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JUL 26 2000

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MAY 19 1999
Department of Water Resources
Southern Region

ORIGINAL

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

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

BEFORE THE
IDAHO DEPARTMENT OF WATER RESOURCES

In the Matter of Application For Transfer No. 5401 (Water Right No. X36-07337E) Jerome Cheese Company, Applicant Bill Chisolm, Lee Halper, Michael Ihler, Darcy Thornborrow, Protestants	**NOTICE OF APPEARANCE**

TO: IDAHO DEPARTMENT OF WATER RESOURCES AND THE PROTESTANTS IN THE ABOVE-CAPTIONED MATTER:

PLEASE take notice that Christopher H. Meyer and Michael C. Creamer of the firm Givens Pursley LLP hereby enter their appearance as attorneys of record for the Applicant, Jerome Cheese Company, in the above-captioned matter.

Pursuant to Procedure Rule 203 (IDAPA 37.01.01.203), Procedure Rule 302 (IDAPA 37.01.01.302), and Procedure Rule 303 (IDAPA 37.01.01.303), all parties are hereby notified and required to serve any subsequent filings in this matter upon the above-named counsel.

DATED this 18th day of May, 1999.

GIVENS PURSLEY LLP

Christopher H. Meyer
Attorneys for Applicant
Jerome Cheese Company

CERTIFICATE OF SERVICE

I hereby certify that on May 18, 1999 I caused to be served a true and correct copy of the foregoing to each of the persons named below by the method indicated below each of their names.

Mr. Bill Chisholm
19073 E. Hwy. 30
Buhl, ID 83316
☑ U.S. Mail ☐ Fax ☐ By hand ☐ Overnight

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

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

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

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

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

Christopher H. Meyer

RECEIVED
MAY 17 1999
Department of Water Resources

Lee J. Halper
331 S 230 W
Jerome, ID 83338
208-324-2240
208-324-4422 fax

BEFORE THE DIRECTOR

IDAHO DEPARTMENT OF WATER RESOURCES

In the Matter of Application of Jerome Cheese Company for Water Right Transfer Number 5401	Water Right No. X36-07337E MOTION FOR ORDER ALLOWING ELECTRONIC HEARING

The protestants, Lee Halper and Bill Chisholm, (Protestants) pursuant to IDAPA 37.01.01.552 and Idaho Statute 67-5242(3e) request that the Department and through its authorized hearing officer in this matter, L. Glen Saxton issue an order authorizing witnesses to participate by telephone or television or other electronic means.

The grounds for this motion are supported by beneficial experience to the process of the public interest as supported by the attached letter (Exhibit A) from Steve Allread, Director of the Idaho State Department of Environmental Quality. Also, the reduction in costs to all parties and the increased scope of knowledge and expert testimony will serve to gather more realtive data and facts which will serve the Department's stated goal of protecting the Waters of the State of Idaho.

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MAY 17 1999
Department of Water Resources

CERTIFICATE OF MAILING

I hereby certify that on the 12th day of May, 1999 a true and correct copy of the foregoing Motion For Order Allowing Electronic Hearing was forwarded with all required charges prepared, upon all parties of record in this proceeding by faxing and mailing a copy thereof to:

Lee Halper-Protestant

Christopher H. Meyer
Givens Pursley LLP
PO Box 2720
Boise, ID 83701-2720
208-388-1300 fax

L. Glen Saxton
IDWR
PO Box 83720
Boise, ID 83720-0098
208-327-7866 fax

Bill Chisholm
19073 E. HWY 30
Buhl, ID 83316

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MAY 20 1999

EXHIBIT 'A'

Subject: MOTION
Date: Wed, 12 May 1999 08:20:46 -0600
From: slvrchst@magiclink.com
To: lee halper <slvrchst@magiclink.com>

Subject:
Re: Fwd: Teleconferncing for Expert Witnesses and Protestants in

WaterHearings
Date:
Tue, 11 May 1999 13:42:23 -0600
From:
"STEVE ALLRED" <SALLRED@DEQ.STATE.ID.US>
To:
H3trifly@AOL.COM

We are actively using teleconferencing tools in our public meeting and hearings to give better access as well as reduce costs and they are working
well. Our contested hearing are handled differently than Water Resources,
but I would think that arrangements could be made to accomplish similar results.

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MAY 2 6 2000

Merritt, Allen

From: Merritt, Allen
Sent: Thursday, May 13, 1999 9:28 AM
To: 'slvrchst@magiclink.com'
Cc: Merritt, Allen
Subject: RE: ADJUDICATION #

Dear Mr. Halper,

I have looked for the original adjudication file and it is not in our region. I believe it has been sent to the state office since a previous transfer was processed. The original file may have photos, etc in it of the place of use as it was recommended to the court. We have microfilm available of the file and you are welcome to view it. All this may be moot since the court has issued a partial decree on the base right (36-07337A) in 1997.

Some believe that once a partial decree is issued by the court it re-sets the forfeiture clock. Some do not believe this. I do not know that this issue has ever been litigated. I have heard both opinions by staff attorneys. I know that the courts are hesitant to forfeit a water right and the department to make such a recommendation or finding must have clear and convincing evidence. I do not know that we have any evidence currently to support forfeiture.

Since 1997 the base right has been split once. There are currently 4 other splits pending including one by Jerome Cheese. The other splits were not protested and recommendations for approval are pending. We have prepared a split tree type of sheet that shows the evolution of the right that I could fax.

I suggest if you could review the files we have and make copies of the information you need would be better than me faxing volumes.

Allen

-----Original Message-----
From: slvrchst@magiclink.com [mailto:slvrchst@magiclink.com]
Sent: Wednesday, May 12, 1999 10:09 AM
To: allen merritt
Subject: ADJUDICATION #

Dear Allen,
Please provide me with the adjudication # and relative data as to its present situation with regards the water right involved with transfer # 5401, the John Sandy water. Also, would you provide proof of compliance with non forfeiture of this water right. My fax # is 324-4422 when the computer is not being used, which is hardly ever, so if you'll call 324-2240 first I'll be able to accommodate it. Thank you.
Lee Halper
331 S 230 W
Jerome, ID 83338

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JUL 2 6 2000

Merritt, Allen

From: Merritt, Allen
Sent: Thursday, May 13, 1999 10:50 AM
To: 'slvrchst@magiclink.com'
Cc: Merritt, Allen
Subject: SRBA Files

In my previous message I indicated the files may be in the State Office. I have located them in our office and they are available for your review.

Allen

5/13/99
Lee Helper visited office & review
AJ files.

GIVENS PURSLEY LLP

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

DIRECT DIAL: 208 388-1236
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Gary G. Allen
Christopher J. Beeson
Michael C. Creamer
Thomas E. Dvorak
Roy Lewis Eiguren
Jeffrey C. Fereday
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L. Edward Miller
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Judson B. Montgomery
Angela K. Nelson
W. Hugh O'Riordan
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Conley Ward
Stephanie C. Westermeier
Robert B. White
Raymond D. Givens
James A. McClure
OF COUNSEL

RECEIVED
MAY 12 1999
Department of Water Resources
Southern Region

May 10, 1999

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

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

Re: In the Matter of Application of Jerome Cheese Company For Water Right Transfer No. 5401 of Water Right No. X36-07337E
Our File No. 5472-1

Dear Messrs. Chisholm and Halper:

As you know, I represent Jerome Cheese Company, the applicant in the above-captioned water right transfer. I was pleased to have had an opportunity to meet you both last Tuesday, May 4, 1999, at the pre-hearing conference held by the Idaho Department of Water Resources in response to your protests. I am writing to follow up on the discussions at that meeting and subsequently. By copy of this letter, I also wish to advise the Department of the status of our discussions.

At the outset, I should note that I am writing to you directly because I understand that neither of you are represented by counsel. You may wish to retain counsel to protect your own interests. Indeed, I would urge you to consider doing so. Should you do so, please advise, and I will conduct all further communications with counsel.

At the pre-hearing conference, I made two basic observations on behalf of Jerome Cheese Company. First, I noted that the Company's application fully satisfies each of the four criteria identified in Idaho Code § 42-222. In short, (1) it will cause no injury, (2) it is not an unlawful enlargement, (3) it is consistent with conservation of water, and (4) it is in the local public interest.

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Post-it® Fax Note 7671	Date	# of pages ▶ 4
To Glen Saxton	From Allen Merritt	
Co./Dept.	Co.	
Phone # FYI	Phone #	
Fax #	Fax #	

Second, the Company made clear that, despite its compliance with section 42-222, it welcomes settlement discussions. The Company is entirely open to any serious proposal to accommodate your concerns. After the pre-hearing conference, the general manager of the Company reinforced to me his commitment in this regard, and instructed me to explore the potential for satisfying your concerns in a manner which would allow you to withdraw your protests.

Since then, I have been unable to reach Mr. Chisholm by telephone, but did have an extended discussion on the subject with Mr. Halper. In that conversation with Mr. Halper, I reiterated the Company's corporate commitment to environmental quality and what I perceive as our common interest in promoting a public dialog on issues relating to the sustainability of emerging approaches to land use and intensive agricultural operations in the Magic Valley.

I specifically proposed that the protestants and the Company agree to participate in a public forum to air concerns and explore options on this important public policy subject. I suggested that the Idaho Environmental Forum, an 850 member education organization (on whose steering committee I serve), might offer a good format—although that would be just one option.

Mr. Halper was quite clear in his response. We could sponsor such a forum if we wanted, but he could see no linkage to the pending protests, and could not envision withdrawing them in exchange for such a public discussion. Nor could Mr. Halper think of any variation on the suggestion which might make it more acceptable.

When this approach failed, I raised again the settlement suggestion made by Mr. Chisholm in the pre-hearing conference. At that time, he said he might be willing to drop his protest in exchange for Jerome Cheese Company signing on to a letter to the Governor taking a particular position with respect to confined animal feeding operations. At the time of the pre-hearing conference, I raised a strong concern that this suggestion appeared to be an improper use of the statutory protest mechanism, in that it sought to extort a change in political position unrelated to the merits of the transfer.

In my recent discussion with Mr. Halper, I reiterated that the Company would not adopt a different political position in response to a protest. On the other hand, I noted that the Company would be willing to state on the record its commitment to sound

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JUL 26 2000

environmental stewardship and its support for a vigorous public debate on the subject of sustainable solutions to environmental problems. Again, Mr. Halper plainly stated that while such a statement would be welcome, it could not serve as a basis for his withdrawal of his protest.

I asked Mr. Halper whether he could think of any other area which would merit consideration for purposes of settlement discussions. Mr. Halper could not think of any, and made plain his bottom line.

It is his position that the Company must be "put to its proof" on each of the four criteria under section 42-222. If we can "prove" each of those four criteria to his satisfaction, he may be willing to withdraw his protest.

I indicated that unless the protestants could identify a serious potential problem with the application, their strategy appeared aimed solely at increasing the cost of the transaction. Mr. Halper said, in essence, so be it, that is our burden.

At the time of the pre-hearing conference, I provided, along with Jon Davis, the General Manager of Jerome Cheese, a detailed explanation of the purposes of the transfer and what I thought was a thorough explanation of how the transfer will not increase, and indeed will reduce, the burden on the water resource.

Jerome Cheese Company is prepared to document these conclusions further at the time of the hearing on the protest. Doing so, however, will entail the preparation of witnesses and the collection of evidence at considerable expense to the Company. I have a difficult time explaining to the Company why it must undergo this expense in light of the fact that you have failed to identify a single specific objection to the transfer—other than a list of the four factors contained in the statute and an insistence that the Company be put to its proof. The record should reflect that the Company objects vigorously to the expense it is being compelled to occur.

The bottom line here is clear, and I think each of us has been very clear about it. Your protests have nothing to do with Jerome Cheese Company's use of water. You have each acknowledged that the Company operates in compliance with rigorous environmental standards, poses no threat to the environment, and, indeed, plays a vital economic role in the community. Rather, your protest is about cows. Cows which the

MICROFILMED
JUL 26 2000

Company does not own or control. Cows and the increasingly intensive agricultural practices you see evolving in the Magic Valley.

I appreciate your concerns. But I do not appreciate that they have anything whatsoever to do with the pending transfer application. The fact that these issues have important public policy overtones does not bring them within the "local public interest" provisions of section 42-222. You may not hold a water transfer hostage because you don't like confined animal feeding operations any more than you may hold a water transfer hostage because you think people should eat less cheese and get more exercise. Whether the legislature ought to outlaw commercial cheese, fast food, confined animal feeding operations, guns, sloppy dressing, or tongue piercing are all questions worth debating. But not a one of them is a proper basis for protesting a water right transfer. If the Company is put to many thousands of dollars of expense simply so that you may have your say on one or more of these issues, we reserve the right to seek reimbursement of expenses incurred.

Messrs. Chisholm and Halper, I urge you to reconsider your protests. We are willing to work with you within a proper public forum to explore the issues which you have raised. You might find that there is more common ground than you expect. But a protest of a properly filed water right transfer application is not a proper forum. It is an abuse of process which we, in turn, will vigorously resist.

Sincerely,

Christopher H. Meyer

cc: Allen Merritt, IDWR (for filing)
Jon Davis, Jerome Cheese Company
Rex Minchey, Jerome Cheese Company
Michael Creamer, Givens Pursley

CHM:baf
S:\Clients\5472\1\Corr\1999-05-10 CHM Ltr to B.Chisholm & L.Halper - Re response to protests.wpd

MICROFILMED
MAY 24 2000

Is your RETURN ADDRESS completed on the reverse side

SENDER:
- Complete items 1 and/or 2 for additional services.
- Complete items 3, and b.
- Print your name and ad s on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following ices (for an extra fee):

1. ☑ Addressee's Ado
2. ☐ Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to: T# 5401

BILL CHISHOLM
19073 E HWY 30
BUHL ID 83316

4a. Article Number 1843

4b. Service Type
☐ Registered ☐ Insured
☒ Certified ☐ COD
☐ Express Mail ☐ Return Receipt for Merchandise

MICROFILMED

7. Date of Delivery 5/12/99

5. Signature (Addressee)

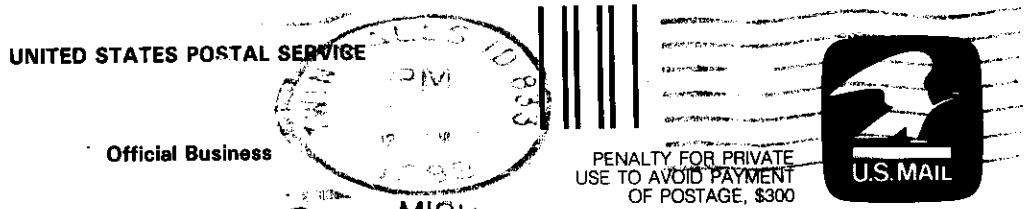
JUL 26 2000

8. Addressee's Address (Only if requested and fee is paid)

6. Signature (Agent)
Bill Chisholm

PS Form 3811, December 1991 ★U.S. GPO: 1993—352-714 DOMESTIC RETURN RECEIPT

Thank you for using Return Receipt Service.


UNITED STATES POSTAL SERVICE
Official Business
PENALTY FOR PRIVATE USE TO AVOID PAYMENT OF POSTAGE, $300
U.S. MAIL
RECEIVED
MAY 13 1999
Department of Water Resources
Southern Region
JUL 26 2000
Print your name, address and ZIP Code here
STATE OF IDAHO
DEPT OF WATER RESOURCES
1341 FILLMORE-SUITE 200
TWIN FALLS ID 83301-3380

SENDER:

- Complete items 1 and/or 2 for additional services.
- Complete items 3, and 4a & b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):

1. ☐ Addressee's Address
2. ☐ Restricted Delivery

Consult postmaster for fee.

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3. Article Addressed to: ID 5401

ATTN REX MINCHEY
JEROME CHEESE CO
PO BOX 485
JEROME ID 83338

4a. Article Number 1841

4b. Service Type

- ☐ Registered
- ☐ Insured
- ☒ Certified
- ☐ COD
- ☐ Express Mail
- ☐ Return Receipt for Merchandise

7. Date of Delivery 5/10/99

5. Signature (Addressee)

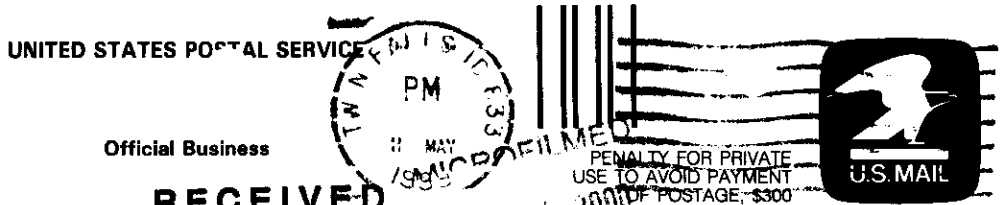
6. Signature (Agent)

8. Addressee's Address (Only if requested and fee is paid)

PS Form **3811**, December 1991 ☆U.S. GPO: 1993—352-714 **DOMESTIC RETURN RECEIPT**

Is your RETURN ADDRESS completed on the reverse side?

Thank you for using Return Receipt Service.



RECEIVED

MAY 12 1999

Department of Water Resources
Southern Region

Print your name, address and ZIP Code here

STATE OF IDAHO
DEPT OF WATER RESOURCES
1341 FILLMORE-SUITE 200
TWIN FALLS ID 83301-3380

MICROFILMED
JUL 26 2000

Is your RETURN ADDRESS completed on the reverse side?

SENDER:

- Complete items 1 and/or 2 for additional services.
- Complete items 3, and [illegible] b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):

1. ☐ Addressee's Address
2. ☐ Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to: T#5401

LEE HALPER
331 S 230 W
JEROME ID 83338

MICROFILMED
JUL 2 [illegible] 2000

4a. Article Number 1844

4b. Service Type
☐ Registered ☐ Insured
☒ Certified ☐ COD
☐ Express Mail ☐ Return Receipt for Merchandise

7. Date of Delivery 5-14-55

5. Signature (Addressee) LEE HALPER

6. Signature (Agent)

8. Addressee's Address (Only if requested and fee is paid)

PS Form **3811**, December 1991 *U.S. GPO: 1993—352-714 **DOMESTIC RETURN RECEIPT**

Thank you for using Return Receipt Service.

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Official Business

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U.S. MAIL

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MAY 17 1999
Department of Water Resources
Southern Region

Print your name, address and ZIP Code here

NC STATE OF IDAHO
DEPT OF WATER RESOURCES
1341 FILLMORE-SUITE 200
TWIN FALLS ID 83301-3380

NAME AND ADDRESS OF SENDER

Indicate type of mail
☐ Registered ☐ Insured ☐ COD ☐ Certified ☐ Express Mail

Check appropriate block for Registered Mail:
☐ With Postal Insurance ☐ Without Postal Insurance

Affix stamp here if issued as certificate of mailing or for additional copies of this bill.

POSTMARK AND DATE OF RECEIPT

FOR REGISTERED, INSURED, C.O.D., CERTIFIED, AND EXPRESS MAIL

Line	Number of Article	Name of Addressee, Street, and Post-Office Address	Postage	Fee	Handling Charge	Act. Value (If Regis.)	Insured Value	Due Sender If C.O.D.	R. R. Fee	S. D. Fee	S. H. Fee	Rest. D. Rem.
1	1833	Lynn Mitchell	.33	1.25	1.40	2.98/100						
2	1834	Alice Parke										
3	1835	Hubert Shaw										
4	1836	Doug Benson										
5	1837	Richard Van Dyk										
6	1839	Victor Bingham Estate	.55	1.25	1.40	3.20						
7	1840	IDWR State Office	65¢	1.25	1.40	9.15						
8	1841 ✓	Jerome Cheese Co AM - 5/7/99 T#5401	.33	1.25	1.40	2.98						
9	1842	Christopher D. Meyer, ESQ										
10	1843 ✓	Bill Chisholm										
11	1844 ✓ (4)	Lee Halper										
12												
13												
14												
15												

Cert.

Cert. mail 1.40
Return Rec. 1.25
3
2.18

1

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2000

Total Number of Pieces Listed by Sender	Total Number of Pieces Received at Post Office	POSTMASTER, PER (Name of receiving employee)

The full declaration of value is req
The maximum indemnity payable f
ment reconstruction insurance is $
occurrence. The maximum indemnity payable on Express Mail
$500. The maximum indemnity payable is $25,000 for Registered Mail, $400 for CO
$400 for Insured Mail. Special handling charges apply only to Third- and Fourt
parcels. Special delivery service also includes special handling service.

PS Form 3877, Feb. 1982

FORM MUST BE COMPLETED BY TYPEWRITER, INK OR BALL POINT PEN

☆ U.S. GOVERNMENT PRINTING OFFICE: 1984-445-

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR TRANSFER OF WATER LICENSE NO. 5401 (X36-07337F)	)	
	)	NOTICE OF HEARING
JEROME CHEESE CO., Applicant	)	
	)	SOURCE: groundwater
BILL CHISHOLM, LEE HALPER, Protestants	)	COUNTY: JEROME

On December 23, 1998 Jerome Cheese, Co., (Applicant) filed with the Department of Water Resources (department) application for transfer of water right no. X36-07337F. The application was protested by the above listed individuals. The conference held by the department on May 4, 1999 did not resolve the matter of protest.

The Department has scheduled the matter for hearing on Tuesday-June 8, 1999 at 9:00 a.m. in the Obenchain Community Room, 264 Main Avenue South, Twin Falls, ID. Participants are cordially requested to **use the WEST entrance** to the building which faces the one-way Second Avenue South street.

The hearing will be held in accordance with provisions of Chapters 2 and 17, Title 42 and Chapter 52, Title 67, Idaho Code and the adopted Rules of Procedure of the department. A copy of the rules may be obtained from the department upon request. The presiding officer at the hearing will be L. Glen Saxton.

IN ADDITION, if the parties wish to have witnesses participate by telephone or television or other electronic means, a Motion for same must be filed with the Hearing Officer describing the details of the request. The Motion must be filed pursuant to the Rules of Procedure of the Department.

IT IS FURTHER NOTED, in accordance with IDAPA Rule of Procedure 37.01.01606, all parties have agreed to exchange witness lists and copies of documents that may be offered as exhibits to each party and to the presiding officer on or before May 24, 1999.

The hearing will be conducted in a facility which meets the accessibility requirements of the Americans With Disabilities Act. If you require special accommodations in order to attend, participate in or understand the hearing, please advise the department within ten (10) days prior to the hearing.

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JUL 26 2000

All parties to the matter will have the opportunity to respond and present information and argument on all issues involved.

Dated this 7th day of May, 1999.

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

CERTIFICATE OF MAILING

I hereby certify that on the 7th day of May, 1999 a true and correct copy of the foregoing Notice of Hearing was forwarded with all required charges prepared, by U.S. Certified Mail, to the parties listed:

Mary A. Baldwin
Secretary

ATTN REX MINCHEY
MAINTENANCE MANAGER
JEROME CHEESE CO
PO BOX 485
JEROME ID 83338

BILL CHISHOLM
19073 E HWY 30
BUHL ID 83316

CHRISTOPHER H MEYER
MICHAEL C CREAMER
GIVENS PURSLEY LLP
PO BOX 2720
BOISE ID 83701-2720

LEE HALPER
331 S 230 W
JEROME ID 83338

MICROFILMED
JUL 26 2000

State of Idaho
DEPARTMENT OF WATER RESOURCES
1341 Fillmore Street, Suite 200, Twin Falls, ID 83301-3380
Phone: (208) 736-3033 FAX: (208) 736-3037

SOUTHERN REGION

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

May 7, 1999

ATTN SANDI STANDLEY
OBENCHAIN COMMUNITY ROOM
264 MAIN AVE SOUTH
TWIN FALLS ID 83301

Dear Sandi:

This letter is to confirm the reservation of the Obenchain Main Avenue Community Room for **Tuesday-June 8, 1999 from 9:00 a.m.- 5:00 p.m.**

If you have any questions please feel free to contact me or Allen Merritt, the Southern Regional Office Manager.

Thank you very much for your assistance in this matter.

Very truly yours,

Mary Baldwin
Administrative Assistant

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JUL 26 2000

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

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

May 7, 1999

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

Dear Interested Party:

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

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

Sincerely,

JULIE L. YARBROUGH, Senior Secretary
Water Allocation Bureau

Enclosure

c: Allen Merritt - IDWR Southern

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JUL 26 2000

Merritt, Allen AP

From: Merritt, Allen
Sent: Wednesday, May 05, 1999 11:57 AM
To: Dreher, Karl; Young, Norm; Saxton, Glen
Cc: Merritt, Allen
Subject: Pre-hearing Conferences

On 5/4 I conducted two pre-hearing conferences. One for transfer T5384 in the name of Box Canyon Dairy. The other for transfer T5401 in the name of Jerome Cheese Co. Both transfers had Bill Chisholm and Lee Halper as protestants. Box Canyon also has Parks & Recreation and Randall Morgan as protestants.

During both conferences, protestants Chisholm and Halper requested that at any future hearings they be allowed to teleconference witnesses into the hearing since the rules allow. This seems to parallel the recent letter from Max Hatfield to Karl. At the conferences I told them that if this was to be allowed by the hearing officer the department would have to make special arrangements. I told them that the department would either issue a pre-hearing order on the subject or they could petition the hearing officer once he was identified. If the latter path is followed they expressed their interest in knowing the hearing officer as soon as possible.

At both conferences N S Nokkentved with the Times News was present. He has written an article printed 5/5/99.

T5384
At the conference all parties were present. The applicant was represented by attorney Mike Felton Jr. and also had Chuck Brockway Sr. as a consultant. The protestants did not have attorneys. Since Quay Marshall was on a joint protest with Bill Chisholm we discussed him either filing a separate protest if he wanted to be a full party or remaining a public witness. The protestants identified all four issues as applicable. Chisholm and Halper's major issue was that of their concern for the public interest of continued degradation of the groundwater by the dairy industry siting IDWR studies of increase in nitrates in the Magic Valley. It was their contention that the dairy industry, Dept of Agriculture, and state government including the governor was not doing enough and is ignoring the problems. They have attempted to raise concerns on other levels but have not been satisfied so they have been forced to fight this battle in the water rights arena. Morgan had the same concerns. Parks and Recreation was also concerned about water quality and how it impacts Box Canyon and the state's interest in this area. Apparently the state has purchased or is negotiating purchase of the Box Canyon and wishes to preserve the area. Additionally, there are endangered snails identified in this spring complex. No resolution of the protest was at hand so I focused on scheduling a hearing. It was finally settled that all parties would submit to me by May 18th a list of available dates for hearing from September 1 to the end of the year. They agreed to exchange witness lists and copies of exhibits by 30 days prior to any set hearing date. I told them that if they wished to conduct discovery that they would need to petition the hearing officer. They requested that the hearing officer be identified as soon as possible.

T5401
At the conference all parties were present. The applicant was represented by attorney Christopher Meyer with Rex Minchey and Jon Davis from the company. The protestants again identified all issues as concerns. They again explained the main concern as described above. The applicant represented that there was to be a water savings to the aquifer since land was to be taken out of production and that they would not divert water anymore from the City of Jerome if transfer(s) approved. Applicant's were concerned about expansion of facilities with more cows being moved into area. Applicant indicated that was not their intent. Applicant indicated that actually if production increased that it could be accomplished with water obtained from process of converting milk to cheese. Applicant indicated that maybe the protestant's issues regarding public interest were not appropriate for the cheese factory transfers. They talked about resolution. Chisholm proposed that if cheese factory would write letter to governor supporting some sort of moratorium or referendum of issues that they would consider withdrawing protest. It was left that Chisholm would draft letter for cheese factory to consider. Halper indicated if he liked the letter he would also consider withdrawal. We discussed the matter of transfer T5436 (protest period ending 5/3) that has also been filed by Jerome Cheese Co. and protested by Chisholm and Halper and others. Chisholm and Halper have same concerns for this transfer with additional concern that this particular transfer proposes water being moved from American Falls area into far distant part of aquifer so would have an increased impact in area of Jerome and Gooding counties. We talked about the potential to combine any hearing on T5436 with T5401. It was decided to try to schedule the hearing for T5401 and schedule a conference for T5436 as soon as possible and if things worked out then there may be a reshuffling to hold a joint hearing. They agreed that a hearing could be held on T5401 on either the 8th or 9th of June. They agreed to exchange witness lists and exhibits on May 24th. There has already been a motion by applicant to do discovery but it has not yet been responded to by the department. They agreed that they would be available for conference on 5/19, 20, 21, 25 for T5436. I told them

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JUL 26 2000

4/26

that I would attempt to schedule something during that time frame but cautioned that there were two other protestants that I need to talk to and it may not be possible. Protestants again requested that a hearing officer be identified as soon as possible since they wish to pursue having a witness at a hearing via a telephone.

On afternoon of 5/4 I called other protestants in T5436 but was not able to talk with them.

We need to brainstorm on how to approach the matter of telephone witnesses. Glen when you get back please call.

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JUL 26 2000

RE: Application for Transfer No. 5401,
Jerome Cheese Co.

PLACE: Conference Rm-Idaho Department of Water Resources
Twin Falls, ID

DATE: **Tuesday-May 4, 1999 at 1:00 p.m.**

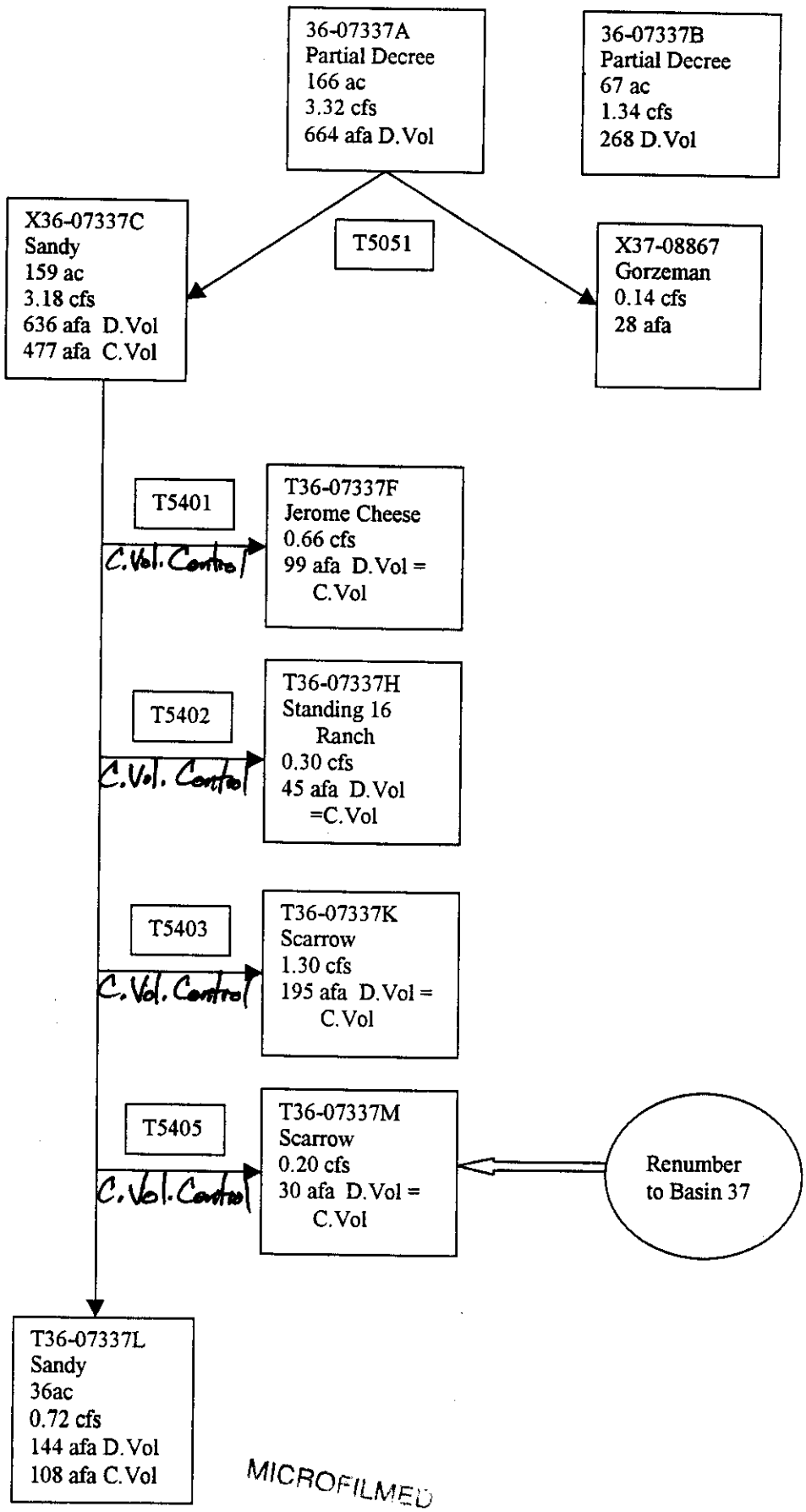
CONFERENCE OFFICER: Allen D. Merritt

ASSISTED BY: None

ROSTER OF ATTENDANCE

NAME	ADDRESS	REPRESENTING
Jon Davis	Jerome	JCC
Rex Minchey	Jerome	Jerome Cheese Co.
NS Nokkentved	Box 548 JF	Times News
LEE HALPER	JEROME	SELF
Bill Chisholm	19073 E Hwy 30 Bahl	Self
Christopher H. Meyer	277 N. 6th St Ste 200 Boise	Jerome Cheese

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JUL 25 2000



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JUL 26 2000

4/27/99

19	20
Tara	Don
Vicky	Jim
Georgia	Connie
Steve	Jeannette
Greg	Kelly
Trish	Mary
Cove	Alex
Annie	Ross ?
Allen	Sherry

First week in May

4/5/99
Mark Gellman

4/7/99
Rex Mechlin
(4/30 5/3-7 5/10-13-14)
Attorney Chris H. Meyer Gibbons & Reuss
277 N 6th St. Suite 201
Boise 83701
P.O. 2720

5357

Arvind in SF?
2/19/99

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JUL 26 2000

Mary Lace
Parks

3, 4 of 6 7
Out of fax — rest of May

MICROFILMED
JUL 2 6 2000

MEMORANDUM

To: Transfer File No. 5401

From: L. Glen Saxton

RE: **MOTION FOR ORDER ALLOWING DISCOVERY**

Date: April 14, 1999

On April 13, 1999, I discussed the above referenced motion with Mike Creamer advising that the department routinely issues such orders requiring a response to interrogatories prior to a hearing but not prior to a conference. I further explained that one of the purposes for a conference was to determine whether discovery was needed and, if so, what time frames should be involved. I said that the department could issue the order now but would require interrogatories prior to the hearing not the conference. Creamer asked that we not do that, since he wanted to be involved in determining the time allowed for interrogatories and determination of the hearing date.

I called Allen Merritt today to determine if he felt there was a need to issue an order and require a response to interrogatories prior to the conference. He did not see a need to change our usual practice of issuing orders requiring that discovery be complete at least 7 days prior to any scheduled hearing in the matter.

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JUL 26 2000

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR TRANSFER NO. 5401	)	NOTICE OF PRE-HEARING CONFERENCE
JEROME CHEESE CO., Applicant	)	
BILL CHISHOLM, LEE HALPER, Protestants	)	SOURCE: groundwater COUNTY: Jerome

On December 23, 1998 Jerome Cheese Co., (applicant) filed with the Department of Water Resources an application to transfer the public waters of the State of Idaho. The Department has received protests against the approval of said application from the above captioned protestants.

The Department has set the matter of protest for conference on **Tuesday-May 4, 1999 at 1:00 p.m.** in the Idaho Department of Water Resources Conference Room, 1341 Fillmore Street, Suite #200; Twin Falls, 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 13th day of April, 1999.

Allen D. Merritt, P.E.
Regional Manager

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JUL 26 2003

CERTIFICATE OF MAILING

I hereby certify that on the 13th day of April, 1999 a true and correct copy of the foregoing Notice of Pre-Hearing Conference was forwarded with all required charges prepared, by Regular U.S. Mail, to the parties listed:

Mary Baldwin
Secretary

ATTN REX MINCHEY
MAINTENANCE MANAGER
JEROME CHEESE CO
PO BOX 485
JEROME ID 83338

BILL CHISHOLM
19073 E HWY 30
BUHL ID 83316

CHRISTOPHER H MEYER
MICHAEL C CREAMER
GIVENS PURSLEY LLP
PO BOX 2720
BOISE ID 83701-2720

LEE HALPER
331 S 230 W
JEROME ID 83338

MICROFILMED
JUL 26 2000

CONFERENCE AND HEARING PROCEDURE

APPLICATION FOR TRANSFER ISSUES

Section 42-222, Idaho Code, identifies the following potential issues that the department can consider in connection with an application for transfer:

1. Will the proposed transfer injure other water rights?

2. Will the proposed transfer constitute an enlargement in the use of the original right?

3. Is the proposed transfer in the local public interest, where local public interest is defined as the affairs of the people in the area directly affected by the proposed use?

4. Is the proposed use contrary to conservation of water resources within the state of Idaho?

BURDEN OF PROOF

The applicant has the initial burden of proof for issues 1, 2, and 4 above and must provide evidence for the department to evaluate these criteria. The initial burden of proof on issue 3 above lies with both the applicant and protestant as to factors of which they are most knowledgeable and cognizant. The applicant has the ultimate burden of persuasion, however, for this issue.

PROCEDURE

The department generally conducts an informal conference with the parties to determine the issues and to try to settle a protested matter before a hearing is scheduled. If a hearing is held, the department will issue a written decision based on the hearing record.

CONFERENCE

The purpose of a pre-hearing conference is to provide the opportunity for the parties and the department to familiarize themselves with a contested matter and to attempt to resolve the matter. At the conference, the department may also formulate and simplify the issues, identify documents to avoid unnecessary proof, exchange proposed exhibits or prepared testimony, limit witnesses, discuss settlement or make settlement offers, schedule hearings, establish procedure at hearing and address other matters that may expedite orderly conduct and disposition of the proceeding or its settlement. The department may issue a "pre-conference statement order" which requires response to the inquiries.

HEARING

The department will tape record the hearing. Copies of a hearing tape are available upon request and the payment of the cost of reproducing the tape. The hearing likely will be conducted by a hearing officer appointed by the Director rather than by the Director himself. If so, the hearing officer will prepare a recommended order for the Director's consideration. Parties can file exceptions to a recommended order, briefs in support of the exceptions or may request oral argument. Parties may seek judicial review of any final order issued by the Director. Parties may by written stipulation waive the right to a recommended order, particularly when a shortened decision process is desirable or necessary. Such a waiver does not eliminate any rights of the parties in connection with the final order of the Director and judicial review of the order.

EXHIBITS

A party who plans to offer an exhibit as part of the hearing record must provide a copy of the proposed exhibit to the parties and to the hearing officer. As part of the conference a date may be set by which exchange of exhibits and witness lists must occur.

EFFECT OF FAILURE TO APPEAR AT A CONFERENCE OR HEARING

Failure to appear at the time and place set for a conference or hearing by the applicant or protestant(s) may allow the department to dismiss without prejudice the protest(s) or the application. Any and all cost incurred by reason of such non-appearance may be assessed against such non-appearing party.

AMERICANS WITH DISABILITIES ACT

Any hearing scheduled will be conducted in a facility which meets the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the hearing, please advise the department within (10) days prior to the hearing.

Christopher H. Meyer, Esq.
Michael C. Creamer, Esq.
GIVENS PURSLEY LLP
277 North 6th Street, Suite 200
P.O. Box 2720
Boise, Idaho 83701-2720
Office: 208-388-1200
Fax: 208-388-1300

COUNSEL FOR JEROME CHEESE COMPANY

ORIGINAL

RECEIVED
APR 1 3 1999
Department of Water Resources

BEFORE THE DIRECTOR
IDAHO DEPARTMENT OF WATER RESOURCES

In the Matter of Application of Jerome Cheese Company For Water Right Transfer No. 5401	Water Right No. X36-07337E **MOTION FOR ORDER ALLOWING DISCOVERY**

The Applicant, Jerome Cheese Company ("Jerome Cheese" or "Applicant"), through its attorneys Givens Pursley LLP, and pursuant to IDAPA 37.01.01.521, request that the Department issue an order authorizing the Applicant to engage in discovery.

The grounds for this Motion are that Jerome Cheese is unable to determine from the Protests filed in the instant matter what the basis for the Protestants' Protest actually are. For example, the Protests fail to state what public interest concerns the Protestants have, or the extent to which there are facts that would support the Protestants' allegations that the water right transfer is not in the public interest.

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JUL 2 6 2000

Protestant Bill Chisholm has asserted that the transfer is "[n]ot in the public interest *among other things*." Prior to incurring the expense of its attorneys appearing at a pre-hearing conference, and to ensure that any pre-hearing conference is productive, Jerome Cheese is entitled to know what facts the Protestants are aware of, if any, that would suggest that the transfer is not in the public interest. Even more fundamentally, Jerome Cheese is entitled to know what "other things" Mr. Chisholm's Protest is based upon. The same is equally true for Mr. Halper's Protest. Further, Jerome Cheese notes that the Department's Notice of Protest form instructs a Protestant to specifically describe the nature of the Protest by providing a statement of facts and law upon which the Protest is based. Therefore, the need for this kind of information prior to the pre-hearing conference is recognized by the Department.

By this Motion, Jerome Cheese requests the Department's authorization to engage in discovery within the full scope authorized by the Department's Rules of Practice and Procedure and consistent with the Idaho Rules of Civil Procedure. Initially, however, Jerome Cheese seeks responses to the Interrogatories and Requests for Production included within the proposed First Set of Interrogatories and Requests for Production directed to the respective Protestants which are attached hereto as Exhibit A and Exhibit B.

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For the above reasons, Jerome Cheese respectfully requests that the Department issue its order allowing Jerome Cheese to engage in discovery, and providing that the Protestants be required to serve their responses on all parties within fifteen (15) days of such Order.

Dated this 12th day of April, 1999.

GIVENS PURSLEY LLP

By: Christopher H. Meyer

Attorneys for Applicant
Jerome Cheese Company

MICROFILMED
APR 26 2000

CERTIFICATE OF SERVICE

I hereby certify that on April 12, 1999 I caused to be served a true and correct copy of the foregoing to each of the persons named below by the method indicated below each of their names:

Mr. Bill Chisholm
19073 E. Hwy. 30
Buhl, ID 83316
☑ U.S. Mail ☐ Fax ☐ By hand ☐ Overnight

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

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

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

Christopher H. Meyer

S:\Clients\5472\1\IDWR\Motion for Permission to Engage in Discovery.wpd

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EXHIBIT A

MICROFILMED
APR 2 8 2009

Christopher H. Meyer, Esq.
Michael C. Creamer, Esq.
GIVENS PURSLEY LLP
277 North 6th Street, Suite 200
P.O. Box 2720
Boise, Idaho 83701-2720
Office: 208-388-1200
Fax: 208-388-1300

COUNSEL FOR JEROME CHEESE COMPANY

DRAFT

BEFORE THE DIRECTOR
IDAHO DEPARTMENT OF WATER RESOURCES

In the Matter of Application of Jerome Cheese Company For Water Right Transfer No. 5401	Water Right No. X36-07337E **JEROME CHEESE COMPANY'S FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS DIRECTED TO PROTESTANT BILL CHISHOLM**

TO: PROTESTANT BILL CHISHOLM AND HIS ATTORNEYS OF RECORD:

YOU WILL PLEASE TAKE NOTICE that Jerome Cheese Company request your sworn responses to the following Interrogatories and Requests for Production of Documents within fifteen (15) days from the service hereof in conformance with the Idaho Rules of Civil Procedure.

I. INSTRUCTIONS

In responding to these Interrogatories and Requests for Production of Documents, you must diligently search all records, files, documents, and materials in your possession or

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available to you or your representatives, and then furnish all responsive information available to you, including information possessed by your employees, officers, directors, agents and attorneys, if any, and any investigators, experts, etc., retained by you or your attorneys (i.e., you must provide responsive information beyond that which is personally known to you).

If an interrogatory has subparts, answer each subpart separately and in full and do not limit your answer to the interrogatory as a whole. If an interrogatory cannot be answered in full, answer to the fullest extent possible, specify the reason for your inability to answer the remainder, and state whatever information and knowledge you have regarding the unanswered portion. In addition to supplying the information requested in each interrogatory, please also identify and describe all documents to which you refer in preparing your answers.

Whenever you are asked to identify or describe a document, your description should include, but not be limited to, the following:

1. The name, address, telephone number, occupation, job title, employer of the custodian of the documents;

2. The date of the making of the document and the name, address, telephone number, occupation, job title and employer of each person whose testimony could be used to authenticate such document and lay the foundation for its introduction into evidence.

Unless otherwise indicated, the following definitions will be utilized with respect to these Interrogatories and Requests for Production:

1. "Documents" means and includes any and all tangible things and documents, whether written, recorded, graphic, typewritten, printed, photocopies, carbon copies or otherwise visually reproduced including, but not limited to, papers, agreements, contracts,

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letters, cables, wires, notes, memoranda, correspondence, prior drafts, telegrams, patents, pleadings, affidavits, depositions, books, reports, pamphlets, studies, minutes, records, accounting books, maps, plans, sketches, charts, drawings, diagrams, photographs, films, assignments, notebooks, ledgers, bills, statements, invoices, checks, receipts, analyses, surveys, transcriptions and recordings, of which you have any knowledge or information, referring, relating or pertaining in any way to the subject matters in connection with which the word "document" is used, and includes but without limitation, all originals, all file copies or reproductions, and all other copies or reproductions, no matter how or by whom prepared, and all drafts prepared in connection with such documents, whether used or not.

2. "Person" shall mean and include a natural person, partnership, corporation or other legal entity together with its principles, agents, employees, representatives and assigns.

INTERROGATORIES

INTERROGATORY NO. 1: Please identify each person known to you or to your attorneys who has or may have knowledge of any fact pertinent or relevant to your Protest of Transfer Application No. 5401. In your answer to this Interrogatory, please include any person who has been retained, hired or relied upon by you, your agents or representatives to review any issues raised by the Application or your Protest to the Application. In your answer, please provide the full name, mailing address, physical address and phone number of each person identified.

INTERROGATORY NO. 2: Please state each and every theory, claim, fact or defense upon which you rely as a basis for your Protest to the Application.

INTERROGATORY NO. 3: Please identify every document of which you are aware that supports or tends to support your answer to Interrogatory 2 above.

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INTERROGATORY NO. 4: With respect to the allegation in your Protest that the Application is "not in the public interest," please:

a. state each and every aspect of the public interest that you contend would be adversely affected by the Application;

b. Identify each and every theory, claim, fact or defense upon which you contend the approval of the Application would not be in the public interest.

INTERROGATORY NO. 5: Please identify every document of which you are aware that supports, or tends to support your answers to Interrogatory 4 above.

INTERROGATORY NO. 6: Do you content that the Application cannot be approved under any conditions?

INTERROGATORY NO 7: If your answer is other than an unqualified "yes," please state each and every condition you contend must be required by the Department as part of approval of the Application.

REQUEST FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1: Please produce each document described or identified or relied upon by you in your response to any of the above Interrogatories 1 through 7.

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2 3 2005

Dated this _____ day of April, 1999.

GIVENS PURSLEY LLP

DRAFT

By: Christopher H. Meyer

Attorneys for Applicant
Jerome Cheese Company

DRAFT

CERTIFICATE OF SERVICE

I hereby certify that on April 12, 1999 I caused to be served a true and correct copy of the foregoing to each of the persons named below by the method indicated below each of their names:

Mr. Bill Chisholm
19073 E. Hwy. 30
Buhl, ID 83316
☐ U.S. Mail ☐ Fax ☐ By hand ☐ Overnight

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

Mr. Lee Halper
331 South 230 West
Jerome, ID 83338
☐ U.S. Mail ☐ Fax ☐ By hand ☐ Overnight

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

DRAFT

Christopher H. Meyer

S:\Clients\5472\1\IDWR\Jerome Cheese Company's First Set of Interrogatories and Request for Production Directed to Chisholm.wpd

APR 26 2000

EXHIBIT B

Christopher H. Meyer, Esq.
Michael C. Creamer, Esq.
GIVENS PURSLEY LLP
277 North 6th Street, Suite 200
P.O. Box 2720
Boise, Idaho 83701-2720
Office: 208-388-1200
Fax: 208-388-1300

COUNSEL FOR JEROME CHEESE COMPANY

DRAFT

BEFORE THE DIRECTOR
IDAHO DEPARTMENT OF WATER RESOURCES

In the Matter of Application of Jerome Cheese Company For Water Right Transfer No. 5401	Water Right No. X36-07337E **JEROME CHEESE COMPANY'S FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS DIRECTED TO PROTESTANT LEE HALPER**

TO: PROTESTANT LEE HALPER AND HIS ATTORNEYS OF RECORD:

YOU WILL PLEASE TAKE NOTICE that Jerome Cheese Company request your sworn responses to the following Interrogatories and Requests for Production of Documents within fifteen (15) days from the service hereof in conformance with the Idaho Rules of Civil Procedure.

I. INSTRUCTIONS

In responding to these Interrogatories and Requests for Production of Documents, you must diligently search all records, files, documents, and materials in your possession or

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available to you or your representatives, and then furnish all responsive information available to you, including information possessed by your employees, officers, directors, agents and attorneys, if any, and any investigators, experts, etc., retained by you or your attorneys (i.e., you must provide responsive information beyond that which is personally known to you).

If an interrogatory has subparts, answer each subpart separately and in full and do not limit your answer to the interrogatory as a whole. If an interrogatory cannot be answered in full, answer to the fullest extent possible, specify the reason for your inability to answer the remainder, and state whatever information and knowledge you have regarding the unanswered portion. In addition to supplying the information requested in each interrogatory, please also identify and describe all documents to which you refer in preparing your answers.

Whenever you are asked to identify or describe a document, your description should include, but not be limited to, the following:

1. The name, address, telephone number, occupation, job title, employer of the custodian of the documents;

2. The date of the making of the document and the name, address, telephone number, occupation, job title and employer of each person whose testimony could be used to authenticate such document and lay the foundation for its introduction into evidence.

Unless otherwise indicated, the following definitions will be utilized with respect to these Interrogatories and Requests for Production:

1. "Documents" means and includes any and all tangible things and documents, whether written, recorded, graphic, typewritten, printed, photocopies, carbon copies or otherwise visually reproduced including, but not limited to, papers, agreements, contracts,

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letters, cables, wires, notes, memoranda, correspondence, prior drafts, telegrams, patents, pleadings, affidavits, depositions, books, reports, pamphlets, studies, minutes, records, accounting books, maps, plans, sketches, charts, drawings, diagrams, photographs, films, assignments, notebooks, ledgers, bills, statements, invoices, checks, receipts, analyses, surveys, transcriptions and recordings, of which you have any knowledge or information, referring, relating or pertaining in any way to the subject matters in connection with which the word "document" is used, and includes but without limitation, all originals, all file copies or reproductions, and all other copies or reproductions, no matter how or by whom prepared, and all drafts prepared in connection with such documents, whether used or not.

2. "Person" shall mean and include a natural person, partnership, corporation or other legal entity together with its principles, agents, employees, representatives and assigns.

INTERROGATORIES

INTERROGATORY NO. 1: Please identify each person known to you or to your attorneys who has or may have knowledge of any fact pertinent or relevant to your Protest of Transfer Application No. 5401. In your answer to this Interrogatory, please include any person who has been retained, hired or relied upon by you, your agents or representatives to review any issues raised by the Application or your Protest to the Application. In your answer, please provide the full name, mailing address, physical address and phone number of each person identified.

INTERROGATORY NO. 2: Please state each and every theory, claim, fact or defense upon which you rely as a basis for your Protest to the Application.

INTERROGATORY NO. 3: Please identify every document of which you are aware that supports or tends to support your answer to Interrogatory 2 above.

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INTERROGATORY NO. 4: With respect to the allegation in your Protest that the Application is "not in the public interest," please:

a. state each and every aspect of the public interest that you contend would be adversely affected by the Application;

b. Identify each and every theory, claim, fact or defense upon which you contend the approval of the Application would not be in the public interest.

INTERROGATORY NO. 5: Please identify every document of which you are aware that supports, or tends to support your answers to Interrogatory 4 above.

INTERROGATORY NO. 6: Please state each and every theory, claim, fact or defense upon which you contend that "unadjudicated water" is relevant to the Department's consideration or determination of the Application, as alleged in your Protest.

INTERROGATORY NO. 7: Please identify every document of which you are aware that supports, or tends to support your answers to Interrogatory 6 above.

INTERROGATORY NO. 8: Please state each and every theory, claim, fact or defense upon which you contend that the Application, or the Department's approval of the Application "violates moratorium" as alleged in your Protest.

INTERROGATORY NO. 9: Please identify every document of which you are aware that supports, or tends to support your answers to Interrogatory 8 above.

INTERROGATORY NO. 10: Do you content that the Application cannot be approved under any conditions?

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INTERROGATORY NO 11: If your answer is other than an unqualified "yes," please state each and every condition you contend must be required by the Department as part of approval of the Application.

REQUEST FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1: Please produce each document described or identified or relied upon by you in your response to any of the above Interrogatories 1 through 11.

Dated this _____ day of April, 1999.

GIVENS PURSLEY LLP

DRAFT

By: Christopher H. Meyer

Attorneys for Applicant
Jerome Cheese Company

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U.S. 1998

DRAFT

CERTIFICATE OF SERVICE

I hereby certify that on April 12, 1999 I caused to be served a true and correct copy of the foregoing to each of the persons named below by the method indicated below each of their names:

Mr. Bill Chisholm
19073 E. Hwy. 30
Buhl, ID 83316
☐ U.S. Mail ☐ Fax ☐ By hand ☐ Overnight

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

Mr. Lee Halper
331 South 230 West
Jerome, ID 83338
☐ U.S. Mail ☐ Fax ☐ By hand ☐ Overnight

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

DRAFT

Christopher H. Meyer

S:\Clients\5472\1\IDWR\Jerome Cheese Company's First Set of Interrogatories and Request for Production Directed to halper.wpd

MICRC

ORIGINAL

Christopher H. Meyer, Esq.
Michael C. Creamer, Esq.
GIVENS PURSLEY LLP
277 North 6th Street, Suite 200
P.O. Box 2720
Boise, Idaho 83701-2720
Office: 208-388-1200
Fax: 208-388-1300
COUNSEL FOR JEROME CHEESE COMPANY

RECEIVED
APR 12 1999
Department of Water Resources

BEFORE THE DIRECTOR
IDAHO DEPARTMENT OF WATER RESOURCES

In the Matter of Application of Jerome Cheese Company For Water Right Transfer No. 5401	Water Right No. X36-07337E **NOTICE OF AVAILABILITY FOR PRE-HEARING CONFERENCE**

COMES NOW Jerome Cheese Company by and through its counsel of record and notes its availability for a pre-hearing conference to address protests filed in the above-captioned matter.

Jerome Cheese and its counsel can make themselves available for a pre-hearing conference in Twin Falls on any of the following dates: May 3, 4, 5, 6 or 7, 1999.

DATED This 12th day of April, 1999.

GIVENS PURSLEY LLP

By: Christopher H. Meyer

Attorneys for Applicant
Jerome Cheese Company

MICROFILMED
JUL 26 2000

CERTIFICATE OF SERVICE

I hereby certify that on April 12, 1999 I caused to be served a true and correct copy of the foregoing to each of the persons named below by the method indicated below each of their names.

Mr. Bill Chisholm
19073 E. Hwy. 30
Buhl, ID 83316
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Original Filed with:
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Director
Idaho Department of Water Resources
1301 N. Orchard St.
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Boise, ID 83720-9000
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Mr. Lee Halper
331 South 230 West
Jerome, ID 83338
☑ U.S. Mail ☐ Fax ☐ By hand ☐ Overnight

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

Christopher H. Meyer

S:\Clients\5472\1\IDWR\1999-04-12 Notice of Availability for Pre-Hearing Conference.wpd

MICROFILMED
JUL 26 2000

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RECEIVED
APR 12 1999
Department of Water Resources

Christopher H. Meyer, Esq.
Michael C. Creamer, Esq.
GIVENS PURSLEY LLP
277 North 6th Street, Suite 200
P.O. Box 2720
Boise, Idaho 83701-2720
Office: 208-388-1200
Fax: 208-388-1300
COUNSEL FOR JEROME CHEESE COMPANY

BEFORE THE DIRECTOR
IDAHO DEPARTMENT OF WATER RESOURCES

In the Matter of Application of Jerome Cheese Company For Water Right Transfer No. 5401	Water Right No. X36-07337E **NOTICE OF APPEARANCE**

TO: IDAHO DEPARTMENT OF WATER RESOURCES AND THE PROTESTANTS IN THE ABOVE-CAPTIONED MATTER:

PLEASE take notice that Christopher H. Meyer and Michael C. Creamer of the firm Givens Pursley LLP, hereby enter their appearance as attorneys of record for the Applicant, Jerome Cheese Company, in the above-captioned matter.

Pursuant to Procedure Rule 203 (IDAPA 37.01.01.203), Procedure Rule 302 (IDAPA 37.01.01.302), and Procedure Rule 303 (IDAPA 37.01.01.303), all parties are hereby notified and required to serve any subsequent filings in this matter upon the above-named counsel.

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JUL 2 2 2003

DATED this 12th day of April, 1999.

GIVENS PURSLEY LLP

By: Christopher H. Meyer

Attorneys for Applicant
Jerome Cheese Company

CERTIFICATE OF SERVICE

I hereby certify that on April 12, 1999 I caused to be served a true and correct copy of the foregoing to each of the persons named below by the method indicated below each of their names.

Mr. Bill Chisholm
19073 E. Hwy. 30
Buhl, ID 83316
☑ U.S. Mail ☐ Fax ☐ By hand ☐ Overnight

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

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

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

Christopher H. Meyer

S:\Clients\5472\1\IDWR\1999-04-12 Notice of Appearance.wpd

MICROFILMED
JUL 26 2000

State of Idaho
DEPARTMENT OF WATER RESOURCES
1341 Fillmore Street, Suite 200, Twin Falls, ID 83301-3380
Phone: (208) 736-3033 FAX: (208) 736-3037

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APR 0 7 1999
Department of Water Resources

SOUTHERN REGION

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

April 5, 1999

Bill Chisholm
19073 E Hwy 30
Buhl, ID 83316

Lee Halper
331 S 230 W
Jerome, ID 83338

RE: Application for Transfer 5384 (Box Canyon Dairy)
Application for Transfer 5401 (Jerome Cheese Co.)

Gentlemen:

As you know you have both protested the above referenced transfers. Our office has been contacted by both applicants and requested to schedule pre-hearing conferences. (Please note that each protested transfer is a separate contested case.)

On March 31, 1999, I received a letter from Michael Felton, Jr., attorney for Box Canyon Dairy indicating they would be available for a pre-hearing conference on April 5, 9, 14, 16, 19, 21, 22, 23, 26, 28; May 3 & 4. On the same day I also received a letter from Jerome Cheese requesting a conference at the earliest convenience.

On March 31 I attempted to contact &/or left messages with all protestants in the above described contested cases. To date Parks and Recreations has responded with April 21, 22, 23; May 3 & 4 as being available. I also received a phone message from Bill Chisholm indicating that the first weekend in May would work best, otherwise he would work around it. I also received a phone call from Lee Halper requesting only a weekend meeting. He also indicated he needs to consult with his attorney. No other parties have responded.

Please note that the department's regular business hours are 8am to 5pm Monday through Friday.

I understand that scheduling of time away from work can often be difficult. Scheduling of time with attorneys is also difficult. Generally, at least initially, the department will attempt to gain consensus among parties before setting a conference as a courtesy. However, absent consensus, the department generally attempts to meet the applicant's time schedule. Ultimately the department will set the time and place and provide 14 days notice. If you or other parties do not like the date then you can file motions (Pursuant to "Rules of Procedure" copy enclosed) to attempt to get it changed. Motions will be considered and then denied or granted.

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Since you both are common protestants to these two matters, I currently propose that what ever date is chosen, to conduct both conferences, one right after the other, so as to be efficient as possible for the state and as least disruptive to your work schedules. I also wish to schedule these conferences as soon as possible to meet the desires of the applicants.

Please provide to me by (Monday) April 12, 1999, by letter or phone call, a list of weekdays which you may be available for a pre-hearing conference and the preferred time between the dates of April 27th through May 14th and between 8am and 5pm. By copy of this letter I also request the other parties do the same.

Please note that a pre-hearing conference is not required in all contested cases by the department. However, it is preferred by the department so the parties can meet and exchange dialogue about issues, discuss the hearing process &/or schedule a formal hearing. Ideally the pre-hearing conference should not be the first time the parties have talked. I encourage both applicants in these matters to contact the protestants to begin dialogue even before a conference is scheduled.

The current parties of record are:

Transfer 5384
Applicant:
Box Canyon Dairy
PO Box 140, Wendell, ID 83355
Applicant's Attorney:
Michael Felton Jr
PO Box 589
Buhl, ID 83316
Protestants:
Bill Chisholm
19073 E Hwy 30
Buhl, ID 83316
Lee Halper
331 S 230 W
Jerome, ID 83338
Randall Morgan
PO Box 101
Buhl, ID 83316
Idaho Parks & Recreation
Attn: Mary Lucachick
PO Box 83720
Boise, ID 83720-0065

Transfer 5401
Applicant:
Jerome Cheese Co
PO Box 485
Jerome, ID 83338
Protestants:
Bill Chisholm
Lee Halper

If any party has questions, please feel free to contact my office.

Sincerely,

Allen Merritt, PE
Southern Region Manager

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JUL 2 5 2000

CC: Glen Saxton
All Parties Listed Above

Magic Valley Maid

RECEIVED
MAR 31 1999
Department of Water Resources
Southern Region

Jerome Cheese
P.O. Box 485
47 West 100 South
Jerome, Idaho 83338

Mr. Allen D. Merritt P.E.
Southern Region Manager
Department of Water Resources
1341 Fillmore Street, Suite 200
Twin Falls, Idaho 83301-3380

Re: Request for pre-hearing conference concerning Notice of Protests to Application for Transfer no. 5401 (x36-07337 Pt)

Dear Mr. Merritt:
I am writing in response to two protests filed against the above referenced application. I respectfully request a date at the earliest possible convenience for a pre-hearing. I have contacted both parties who filed the protests, and I feel it would be in the best interest of all parties to meet in a pre-hearing conference.

Respectfully yours,
J. Rex Minchey
Maintenance Manager
Jerome Cheese Co.

MICROFILMED

State of Idaho
DEPARTMENT OF WATER RESOURCES
1341 Fillmore Street, Suite 200, Twin Falls, ID 83301-3380
Phone: (208) 736-3033 FAX: (208) 736-3037

SOUTHERN REGION

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

March 31, 1999

ATTN JOHN CECIL
CITY OF JEROME
152 E AVE A
JEROME ID 83338

RE: Jerome Cheese Co. Applications

Dear Mr. Cecil:

Per your request on this date, please find the following listed items enclosed:

1) Copy of Protested Application for Transfer No. 5401.

2) List of parties associated with Transfer No. 5401.

3) Copy of Application for Transfer No. 5436.

4) Department of Water Resources Administrative Rules of Procedure.

If you have any questions or if this office can be of further assistance, please feel free to contact us.

Sincerely,

Mary A. Baldwin
Administrative Assistant

MB

MICROFILMED
JUL 26 2000

State of Idaho
DEPARTMENT OF WATER RESOURCES
1341 Fillmore Street, Suite 200, Twin Falls, ID 83301-3380
Phone: (208) 736-3033 FAX: (208) 736-3037

SOUTHERN REGION

March 30, 1999

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

ATTN REX MINCHEY
JEROME CHEESE CO
PO BOX 485
JEROME ID 83338

RE: APPLICATION FOR TRANSFER NO. 5401 (X36-07337 Pt)

Dear Mr. Minchey:

Enclosed are copies of protests filed against the above referenced application. The Department suggests you contact the protestant(s) directly to determine the exact nature of the protest(s) and, if possible, to resolve the matter without action by the Department.

Please note that your application is considered a contested case and subject to the Rules of Procedure adopted by the Department.

If you need a copy of these rules, please contact this office. The Rules of Procedure are also available on the Internet by using the IDWR Homepage at the following electronic address:

http://www.idwr.state.id.us/apa/idapa37/0101.htm

The attachment to this letter describes the issues which the Department must consider in taking action on an application. It also gives a brief description of the conference and hearing procedure followed by the Department in resolving protested applications.

If you wish to proceed with a Pre-hearing Conference &/or formal Hearing, please notify this office.

If you have any questions or if this office can be of further assistance, please feel free to contact us.

Very truly yours,

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

AM:MB

Enclosure(s)

MICROFILMED
JUL 26 2000

State of Idaho
DEPARTMENT OF WATER RESOURCES
1341 Fillmore Street, Suite 200, Twin Falls, ID 83301-3380
Phone: (208) 736-3033 FAX: (208) 736-3037

SOUTHERN REGION

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

March 30, 1999

BILL CHISHOLM
19073 E HWY 30
BUHL ID 83316

LEE HALPER
331 S 230 W
JEROME ID 83338

RE: APPLICATION FOR TRANSFER NO. 5401 (X36-07337 Pt-Jerome Cheese Co.)

Dear Protestant(s):

Your protest against the approval of the above referenced application has been received and a copy has been sent to the applicant with the suggestion that he contact you directly to determine the exact nature of the protest and, if possible, to resolve the matter without action by the Department.

Please note that the application is considered a contested case and subject to the Rules of Procedure adopted by the Department.

If you need a copy of these rules, please contact this office. The Rules of Procedure are also available on the Internet by using the IDWR Homepage at the following electronic address:

http://www.idwr.state.id.us/apa/idapa37/0101.htm

The attachment to this letter describes the issues which the Department must consider in taking action on an application. It also gives a brief description of the conference and hearing procedure followed by the Department in resolving protested applications.

If you have any questions or if this office can be of further assistance, please feel free to contact us.

Very truly yours,

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

AM:MB
Enclosure(s)

MICROFILMED

JUL 26 2000

CONFERENCE AND HEARING PROCEDURE

APPLICATION FOR TRANSFER ISSUES

Section 42-222, Idaho Code, identifies the following potential issues that the department can consider in connection with an application for transfer:

1. Will the proposed transfer injure other water rights?

2. Will the proposed transfer constitute an enlargement in the use of the original right?

3. Is the proposed transfer in the local public interest, where local public interest is defined as the affairs of the people in the area directly affected by the proposed use?

4. Is the proposed use contrary to conservation of water resources within the state of Idaho?

BURDEN OF PROOF

The applicant has the initial burden of proof for issues 1, 2, and 4 above and must provide evidence for the department to evaluate these criteria. The initial burden of proof on issue 3 above lies with both the applicant and protestant as to factors of which they are most knowledgeable and cognizant. The applicant has the ultimate burden of persuasion, however, for this issue.

PROCEDURE

The department generally conducts an informal conference with the parties to determine the issues and to try to settle a protested matter before a hearing is scheduled. If a hearing is held, the department will issue a written decision based on the hearing record.

CONFERENCE

The purpose of a pre-hearing conference is to provide the opportunity for the parties and the department to familiarize themselves with a contested matter and to attempt to resolve the matter. At the conference, the department may also formulate and simplify the issues, identify documents to avoid unnecessary proof, exchange proposed exhibits or prepared testimony, limit witnesses, discuss settlement or make settlement offers, schedule hearings, establish procedure at hearing and address other matters that may expedite orderly conduct and disposition of the proceeding or its settlement. The department may issue a "pre-conference statement order" which requires response to the inquiries.

HEARING

The department will tape record the hearing. Copies of a hearing tape are available upon request and the payment of the cost of reproducing the tape. The hearing likely will be conducted by a hearing officer appointed by the Director rather than by the Director himself. If so, the hearing officer will prepare a recommended order for the Director's consideration. Parties can file exceptions to a recommended order, briefs in support of the exceptions or may request oral argument. Parties may seek judicial review of any final order issued by the Director. Parties may by written stipulation waive the right to a recommended order, particularly when a shortened decision process is desirable or necessary. Such a waiver does not eliminate any rights of the parties in connection with the final order of the Director and judicial review of the order.

EXHIBITS

A party who plans to offer an exhibit as part of the hearing record must provide a copy of the proposed exhibit to the parties and to the hearing officer. As part of the conference a date may be set by which exchange of exhibits and witness lists must occur.

EFFECT OF FAILURE TO APPEAR AT A CONFERENCE OR HEARING

Failure to appear at the time and place set for a conference or hearing by the applicant or protestant(s) may allow the department to dismiss without prejudice the protest(s) or the application. Any and all cost incurred by reason of such non-appearance may be assessed against such non-appearing party.

AMERICANS WITH DISABILITIES ACT

Any hearing scheduled will be conducted in a facility which meets the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the hearing, please advise the department within (10) days prior to the hearing.

36

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
NOTICE OF PROTEST

RECEIVED
MAR 29 1999
Department of Water Resources
Southern Region

his form may be used to file a protest with the department under sections 42-108B, 42-203A, 42-203C, 42-211, 42-222 and 2-224, Idaho Code. The department will also accept a timely protest not completed on this form if it contains the same formation.

. Matter being protested #5401 TRANSFER

. Name of protestant LEE HALPER

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

. Service mailing address 331 S 230W JEROME 83338

. Service telephone no. 324 2240

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

NOT IN PUBLIC INTEREST
UNDERMINES WATER RIGHTS VIOLATES ADJUDICATION

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

. What would resolve your protest? FULL DISCLOSURE OF FACTS AND COMPLETION OF GOVERNMENTAL PROCESS

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

Signed this 29th day of March, 1999.

PROTESTANT

MICROFILMED
OCT 25 2000

PROTESTANT'S REPRESENTATIVE

NOTE:

A protestant is required to timely file a protest with the department together with a $25.00 protest fee for each application being protested in order for the protestant to be considered a full party by the department. In addition, the department's Rule of Procedure, IDAPA 37.01.01203, requires a protestant to send a copy of a protest to the applicant.

INSTRUCTIONS

1. The matter being protested must be clearly identified. A typical matter is identified by the application number such as "Application for Permit No. _____ in the name of _____" or "Application for Transfer No. _____ in the name of _____."

2. Show the name of the protestant. Only one (1) protestant may be shown per protest form. If this protest form is signed by more than one person, the hearing officer will consider the first signer as the official protestant and the representative for service of documents.

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

4. Show the address where the department is to serve the documents. This should be the address of the authorized representative unless the protestant does not designate a representative.

5. Show the telephone number of the authorized representative unless the protestant does not designate a service representative.

6. Specifically describe the nature of the protest.

7. Describe the relief being sought by the protestant.

FOR DEPARTMENT USE ONLY

Received by J Estanton Date 3-29-99 Time 2:29 pm

$25.00 fee Receipted by JE # 5021961 Date 3-29-99

MICROFILMED

JUL 26 2000

96

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
NOTICE OF PROTEST

RECEIVED
MAR 29 1999
Department of Water Resources
Southern Region

his form may be used to file a protest with the department under sections 42-108B, 42-203A, 42-203C, 42-211, 42-222 and 2-224, Idaho Code. The department will also accept a timely protest not completed on this form if it contains the same formation.

. Matter being protested #5401 TRANSFER

. Name of protestant BILL CHISHOLM

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

. Service mailing address 19073 E. HWY 30 BUHL

. Service telephone no. 543-4418

. Basis of protest (including statement of facts and law upon which the protest is based)
NOT IN PUBLIC INTEREST AMONG OTHER THINGS

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

. What would resolve your protest? UNSURE

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

Signed this 29th day of MARCH, 19 99.

PROTESTANT

PROTESTANT'S REPRESENTATIVE

MICROFILMED

JUL 26 2000

NOTE:

A protestant is required to timely file a protest with the department together with a $25.00 protest fee for each application being protested in order for the protestant to be considered a full party by the department. In addition, the department's Rule of Procedure, IDAPA 37.01.01203, requires a protestant to send a copy of a protest to the applicant.

INSTRUCTIONS

1. The matter being protested must be clearly identified. A typical matter is identified by the application number such as "Application for Permit No. _____ in the name of _____" or "Application for Transfer No. _____ in the name of _____."

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FOR DEPARTMENT USE ONLY

Received by JGostanton Date 3-29-99 Time 2:29 pm

$25.00 fee Receipted by JG # 5021961 Date 3-29-99

MICROFILMED

JUN 25 2000

FORM 222a
9/95

IDWR TRANSFER ANALYSIS SHEET

APPLICANT _____ TRANSFER NO. _____

1. Right number(s) _____

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: Portion of right was transferred in 1999 with IDWR approval. No additional field work should be needed. Recommend approval.

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

___ **Also see attached memo for more analysis information**

a. ___ All of right

b. ___√___ Part of right (***NOTE! Part B should be filled in only if part of right is owned by the applicant***)

c. ___√___ Description of point(s) of diversion

d. ___√___ Description of place of use

e. ___√___ Map showing P/D & P/U after transfer

f. ___√___ Correct notarized signature and $100 fee

g. ___√___ Proof of ownership of right &/or land from which water is transferred

h. ___√___ Expansion in use of right - Comments: None requested.

i. ✓ Existing rights from same source, on land water is being transferred to; right number(s): _____

will replace Jerome city water if approved

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

None

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

INITIAL ALLOCATION REVIEW BY JEstanton **DATE** 1-14-98
SRBA SUPERVISOR REVIEW BY DJones **DATE** 4/27/99
PUBLICATION REVIEW BY _____ **DATE** _____

1. Legal Notice electronically sent to DWR03::VAULT ✓ Yes @ 2:10 pm (3/2/99)

2. COMMENT LETTERS Copy of Pg 1 to AJ ✓ Yes 3/24/99

Watermaster recommendation requested on _____, Received on _____

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

_____

3. Transfer published correctly? ___ Yes ___ No

4. Affidavit of publication received? ___ Yes ___ No

5. Protests received? ___ Yes ___ No; Acknowledgement sent? ___ Yes

6. Copies made for Region file (see attached supplemental page)? ___ Yes

RECOMMENDED ACTION

1. ___ Approve

2. ___ Deny due to _____

_____

3. Conditions (special conditions in Water Districts) _____

_____

___ Also see attached memo for recommendation dated: _____

4. By _____ Date _____

AFFIDAVIT of PUBLICATION

State of Idaho
County of Gooding } ss.

RECEIVED
MAR 23 1999
Department of Water Resources
Southern Region

Patty Nance, being first duly sworn, deposes and says that she is the printer (publisher) of the Gooding County Leader, a newspaper published every week in Gooding, County of Gooding, State of Idaho; that said newspaper has been continuously and uninterruptedly published for a period of seventy-eight consecutive weeks prior to the first publication of the annexed notice, and is a newspaper qualified to publish legal notices as provided by act of the 1919 session of the legislature of the State of Idaho, known as House Bill 145; that the annexed advertisement was published once each week for 2 consecutive issues in said newspaper proper and not in supplement; that the date of the first publication of said advertisement was on the 11th day of March, 1999 and that date of the last publication was on the 18th day of March, 1999

Patty Nance

On this 18th day of March in the year of 1999, before me, a Notary Public, personally appeared Patty Nance, known or identified to me to be the person whose name subscribed to the within instrument, and being by me first duly sworn, declared that the statements therein are true, and acknowledge to me that she executed the same.

Donna LeVoe

Notary Public for Idaho
Residing at Jerome, Id

My commission expires: 3/6/01

#24607/7032
GOODING COUNTY LEADER
Gooding, Idaho

OK mlb 3/29/99

COST OF PUBLICATION

Number of Picas per Line _____

Number of Lines in Notice _____

Number of Insertions 2X

_____	Lines tabular at	_____	7¢/Pica
1,008.56	Lines straight at	60.51	6¢/Pica
1,008.56	Subsequent lines at	50.43	5¢/Pica
	Affidavit Fee	2.25	
	TOTAL COST	113.19	

1 apps. for transfer
TITLE OF NOTICE

PLAINTIFF ATTORNEY

DEFENDANT

PLAINTIFF

IDWR
BILL TO

COPY OF NOTICE

NO[illegible] CHANGES
TO[illegible]
No[illegible] (4)
Applications for Transfer [illegible] been filed with the Department of Water Resources for changes in a water right. PRESENTLY, Water Right No. 336-07337C (3.18 cfs) with a priority date of 11/25/1977 is diverted from [illegible] groundwater within NE[illegible]1/4 & NW1/4SE1/4, SW for irrigation of 159 acres within parts of SW, all T08S, R14E; Gooding County.
Transfer No. [illegible] filed in the name of [illegible] CO. PO BOX [illegible]; [illegible] proposes to split off a portion of the water right for year round commercial use (8.66 cfs) by drying up 33 irrigated acres. Water will be diverted from two (2) new wells and used within NW1/4SE1/4, SE, T08S, R16E; Jerome County using designated Right No. 36-07337F.
Transfer No. [illegible] filed in the name of THE STANDING 16 RANCH, INC., C/O STEVE SEQUEIRA, ID [illegible] proposes to split off a portion of the water right for year round commercial use (8.66 cfs) by drying up 33 irrigated acres. Water will be diverted from two (2) new wells and used within NW1/4SE1/4, SE, T08S, R16E; Jerome County using designated Right No. 36-07337F.

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7-8 7¢/Pica
7-8 6¢/Pica
7-8
ins 5¢/Pica

No. 7032

MICROFILMED 24607

NOTICE OF PROPOSED CHANGES TO A WATER RIGHT

Notice is hereby given that that four (4) Applications for Transfer have been filed with the Department of Water Resources for changes to a water right.

PRESENTLY, Water Right No. X36-07337C (3.18 cfs) with a priority date of 11/25/1977 is diverted from groundwater within NE1/4SW1/4 & NW1/4SE1/4, S05 for irrigation of 159 acres within parts of S05, all T08S, R14E; Gooding County.

Transfer No. 5401 filed in the name of JEROME CHEESE CO., PO BOX 485; JEROME ID 83338 proposes to split off a portion of the water right for year round commercial use (0.66 cfs) by drying up 33 irrigated acres. Water will be diverted from two (2) new wells and used within NW1/4NE1/4, S25, T08S, R16E; Jerome County using designated Right No. 36-07337F.

Transfer No. 5402 filed in the name of THE STANDING 16 RANCH INC., C/O STEVE ERQUIAGA, 252 W 300 N; JEROME ID 83338 proposes to split off a portion of the water right for year round stockwater use (0.30 cfs) and commercial use (0.30 cfs) by drying up 15 irrigated acres. Water will be diverted from one (1) existing well within SW1/4SE1/4 and two (2) existing wells within SE1/4SW1/4 for commercial use within SW1/4 and parts of SE1/4;stockwater use within SE1/4SW1/4 & SW1/4SE1/4, all S34, T07S, R16E; Jerome County using designated Right No. 36-07337H.

Transfer No. 5403 filed in the name of JIM D. SCARROW, 3184 S 1900 E; WENDELL ID 83355 proposes to split off a portion of the water right for year round stockwater use (1.30 cfs) and commercial use (1.30 cfs) by drying up 65 irrigated acres. Water will be diverted from three (3) wells within NE1/4NW1/4 for commercial use within NW1/4; stockwater use within N1/2NW1/4, all S14, T08S, R15E; Gooding County using designated Right No. 36-07337K.

Transfer No. 5405 also filed in the name of JIM D. SCARROW proposes to split off a portion of the water right for year round stockwater use (0.20 cfs) by drying up 10 irrigated acres. Water will be diverted from four (4) wells within NW1/4NW1/4 for stockwater use within N1/2NW1/4, all S11, T05S, R17E; Lincoln County using designated Right No. 36-07337M.

Any protest against the proposed changes must be filed with the Department of Water Resources, Southern Region, 1341 Fillmore St., Suite 200; Twin Falls, ID 83301 together with a protest fee of $25.00 on or before March 29, 1999 to be considered by the Department in its decision to grant or deny any part of the proposed change. **(Each transfer requires a separate protest).** The protestant must also send a copy of the protest to the applicant.

Karl J. Dreher, Director

Published in the Gooding County Leader on 3/11 & 3/18/99.

NOTICE OF PROPOSED CHANGES TO A WATER RIGHT

Notice is hereby given that that four (4) Applications for Transfer have been filed with the Department of Water Resources for changes to a water right.

PRESENTLY, Water Right No. X36-07337C (3.18 cfs) with a priority date of 11/25/1977 is diverted from groundwater within NE1/4SW1/4 & NW1/4SE1/4, S05 for irrigation of 159 acres within parts of S05, all T08S, R14E; Gooding County.

Transfer No. 5401 filed in the name of JEROME CHEESE CO., PO BOX 485; JEROME ID 83338 proposes to split off a portion of the water right for year round commercial use (0.66 cfs) by drying up 33 irrigated acres. Water will be diverted from two (2) new wells and used within NW1/4NE1/4, S25, T08S, R16E; Jerome County using designated Right No. 36-07337F.

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Transfer No. 5403 filed in the name of JIM D. SCARROW, 3184 S 1900 E; WENDELL ID 83355 proposes to split off a portion of the water right for year round stockwater use (1.30 cfs) and commercial use (1.30 cfs) by drying up 65 irrigated acres. Water will be diverted from three (3) wells within NE1/4NW1/4 for commercial use within NW1/4; stockwater use within N1/2NW1/4, all S14, T08S, R15E; Gooding County using designated Right No. 36-07337K.

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Karl J. Dreher, Director

Published in the Gooding County Leader on 3/11 & 3/18/99.

AFFIDAVIT of PUBLICATION

RECEIVED

MAR 2 2 1999

Department of Water Resources
Southern Region

State of Idaho } ss.
County of Jerome }

Patty Nance, being first duly sworn, deposes and says that he/she is the printer (publisher) of the Jerome North Side News, a newspaper published every week in Jerome, County of Jerome, State of Idaho; that said newspaper has been continuously and uninterruptedly published for a period of seventy-eight consecutive weeks prior to the first publication of the annexed notice, and is a newspaper qualified to publish legal notices as provided by act of the 1919 session of the legislature of the State of Idaho, known as House Bill 145; that the annexed advertisement was published once each week for 2 consecutive issues in said newspaper proper and not in a supplement; that the date of the first publication of said advertisement was on the 11th day of March 1999, and the date of the last publication was on the 18th day of March, 1999.

Patty Nance

On this 18th day of March, in the year of 1999, before me, a Notary Public, personally appeared Patty Nance, known or identified to me to be the person whose name subscribed to the within instrument, and being by me first duly sworn, declared that the statements therein are true, and acknowledged to me that he/she executed the same.

Notary Public for Idaho
Residing at Jerome, ID
My commission expires: 3/6/01

#24606/7914
NORTH SIDE NEWS
Jerome, Idaho

OK MB 3/29/99

COST OF PUBLICATION

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

_____ Lines tabular at _____ 7¢/Pica
773.44 Lines straight at 46.41 6¢/Pica
773.44 Subsequent lines at 38.67 5¢/Pica
Affidavit Fee: ~~10.25~~
TOTAL COST 87.33

APR 2 5 1999

COPY OF NOTICE

(Paste Here)

4 apps. for transfer
TITLE OF NOTICE

PLAINTIFF ATTORNEY

DEFENDANT

PLAINTIFF
IDWR

BILL TO

NOTICE OF PROPOSED CHANGES TO A WATER RIGHT

Notice is hereby given that that four (4) Applications for Transfer have been filed with the Department of Water Resources for changes to a water right.

PRESENTLY, Water Right No. X36-107337C (3.18 cfs) with a priority date of 11/25/1977 is diverted from groundwater within NE1/4SW1/4 & NW1/4SE1/4, S05 for irrigation of 159 acres within parts of S05, all T08S, R14E; Gooding County.

Transfer No. 5401 filed in the name of JEROME CHEESE CO., PO BOX 485; JEROME ID 83338 proposes to split off a portion of the water right for year round commercial use (0.66 cfs) by drying up 33 irrigated acres. Water will be diverted from two (2) new wells and used within NW1/4NE1/4, S25, T08S, R14E, Lavaca ...

7-8 pt. per line tabular ..... 7¢/Pica
7-8 pt. per line straight ..... 6¢/Pica
7-8 pt. per line successive insertions ..... 5¢/Pica

No 7914

24606

NOTICE OF PROPOSED CHANGES TO A WATER RIGHT

Notice is hereby given that that four (4) Applications for Transfer have been filed with the Department of Water Resources for changes to a water right.

PRESENTLY, Water Right No. X36-07337C (3.18 cfs) with a priority date of 11/25/1977 is diverted from groundwater within NE1/4SW1/4 & NW1/4SE1/4, S05 for irrigation of 159 acres within parts of S05, all T08S, R14E; Gooding County.

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Transfer No. 5402 filed in the name of THE STANDING 16 RANCH INC., C/O STEVE ERQUIAGA, 252 W 300 N; JEROME ID 83338 proposes to split off a portion of the water right for year round stockwater use (0.30 cfs) and commercial use (0.30 cfs) by drying up 15 irrigated acres. Water will be diverted from one (1) existing well within SW1/4SE1/4 and two (2) existing wells within SE1/4SW1/4 for commercial use within SW1/4 and parts of SE1/4;stockwater use within SE1/4SW1/4 & SW1/4SE1/4, all S34, T07S, R16E; Jerome County using designated Right No. 36-07337H.

Companion transfer Nos. 5403 and 5405 filed by JIM D. SCARROW, 3184 S 1900 E; WENDELL ID 83355 propose to split off portions of the water right for stockwater and/or commercial uses by drying up irrigated acres. Any protest against the proposed changes must be filed with the Department of Water Resources, Southern Region, 1341 Fillmore St., Suite 200; Twin Falls, ID 83301 together with a protest fee of $25.00 on or before March 29, 1999 to be considered by the Department in its decision to grant or deny any part of the proposed change. **(Each transfer requires a separate protest).** The protestant must also send a copy of the protest to the applicant.

Karl J. Dreher, Director

Published in North Side News on 3/11 & 3/18/99.

State of Idaho
DEPARTMENT OF WATER RESOURCES
1341 Fillmore Street, Suite 200, Twin Falls, ID 83301-3380
Phone: (208) 736-3033 FAX: (208) 736-3037

SOUTHERN REGION

March 2, 1999

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

LEGALS DEPT
MAGIC VALLEY PUBLISHING CO
ATTN **North Side News**
PO BOX 468
JEROME ID 83338

Gentlemen:

Enclosed you will find a legal notice which we wish to have published in your newspaper. We have inserted the required publication dates.

We have attempted to submit this legal as camera ready. Please call me at your earliest convenience and prior to your staff re-typing the legal if it does not meet your specifications so I can possibly make adjustments.

If you cannot publish the notice on the proposed dates, please contact us immediately.

In order to receive payment, an affidavit of publication must be submitted to the Department along with the publication bill.

Very truly yours,

Mary Baldwin
Administrative Assistant

Enclosure

NOTICE OF PROPOSED CHANGES TO A WATER RIGHT

Notice is hereby given that that four (4) Applications for Transfer have been filed with the Department of Water Resources for changes to a water right.

PRESENTLY, Water Right No. X36-07337C (3.18 cfs) with a priority date of 11/25/1977 is diverted from groundwater within NE1/4SW1/4 & NW1/4SE1/4, S05 for irrigation of 159 acres within parts of S05, all T08S, R14E; Gooding County.

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Transfer No. 5402 filed in the name of THE STANDING 16 RANCH INC., C/O STEVE ERQUIAGA, 252 W 300 N; JEROME ID 83338 proposes to split off a portion of the water right for year round stockwater use (0.30 cfs) and commercial use (0.30 cfs) by drying up 15 irrigated acres. Water will be diverted from one (1) existing well within SW1/4SE1/4 and two (2) existing wells within SE1/4SW1/4 for commercial use within SW1/4 and parts of SE1/4;stockwater use within SE1/4SW1/4 & SW1/4SE1/4, all S34, T07S, R16E; Jerome County using designated Right No. 36-07337H.

Companion transfer Nos. 5403 and 5405 filed by JIM D. SCARROW, 3184 S 1900 E; WENDELL ID 83355 propose to split off portions of the water right for stockwater and/or commercial uses by drying up irrigated acres.

Any protest against the proposed changes must be filed with the Department of Water Resources, Southern Region, 1341 Fillmore St., Suite 200; Twin Falls, ID 83301 together with a protest fee of $25.00 on or before March 29, 1999 to be considered by the Department in its decision to grant or deny any part of the proposed change. **(Each transfer requires a separate protest).** The protestant must also send a copy of the protest to the applicant.

Karl J. Dreher, Director

Published in North Side News on 3/11 & 3/18/99.

State of Idaho
DEPARTMENT OF WATER RESOURCES
1341 Fillmore Street, Suite 200, Twin Falls, ID 83301-3380
Phone: (208) 736-3033 FAX: (208) 736-3037

SOUTHERN REGION

February 24, 1999

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

ATTN REX MINCHEY
JEROME CHEESE CO
PO BOX 485
JEROME ID 83338

Re: Application for Transfer No. 5401 (36-07337 Pt)

Dear Applicant(s):

The Department of Water Resources acknowledges receipt of your Application for Transfer.

Since the applications proposes a change in County for the point of diversion, this office has scheduled advertising the applications in both the Gooding County Leader & North Side News for 03/11 and 03/18/99. A period of ten days following the second publication will be allowed for the submittal of protests with the final protest date on March 29, 1999.

If an application is protested, you will be sent a copy of the protest. The protest must be resolved before the application is approved or denied. If the protest is not resolved voluntarily, this Department will conduct a conference and/or hearing on the matter.

The department's review process may have to include field investigation and verification of the claims which is required as part of the Snake River Basin Adjudication.

State Office personnel will conduct a complete review prior to final processing of the application and will notify you of the outcome of this review.

Please feel free to contact this office if you have any questions regarding this procedure.

Very truly yours,

James E. Stanton
Sr. Water Resource Agent

JS:MB

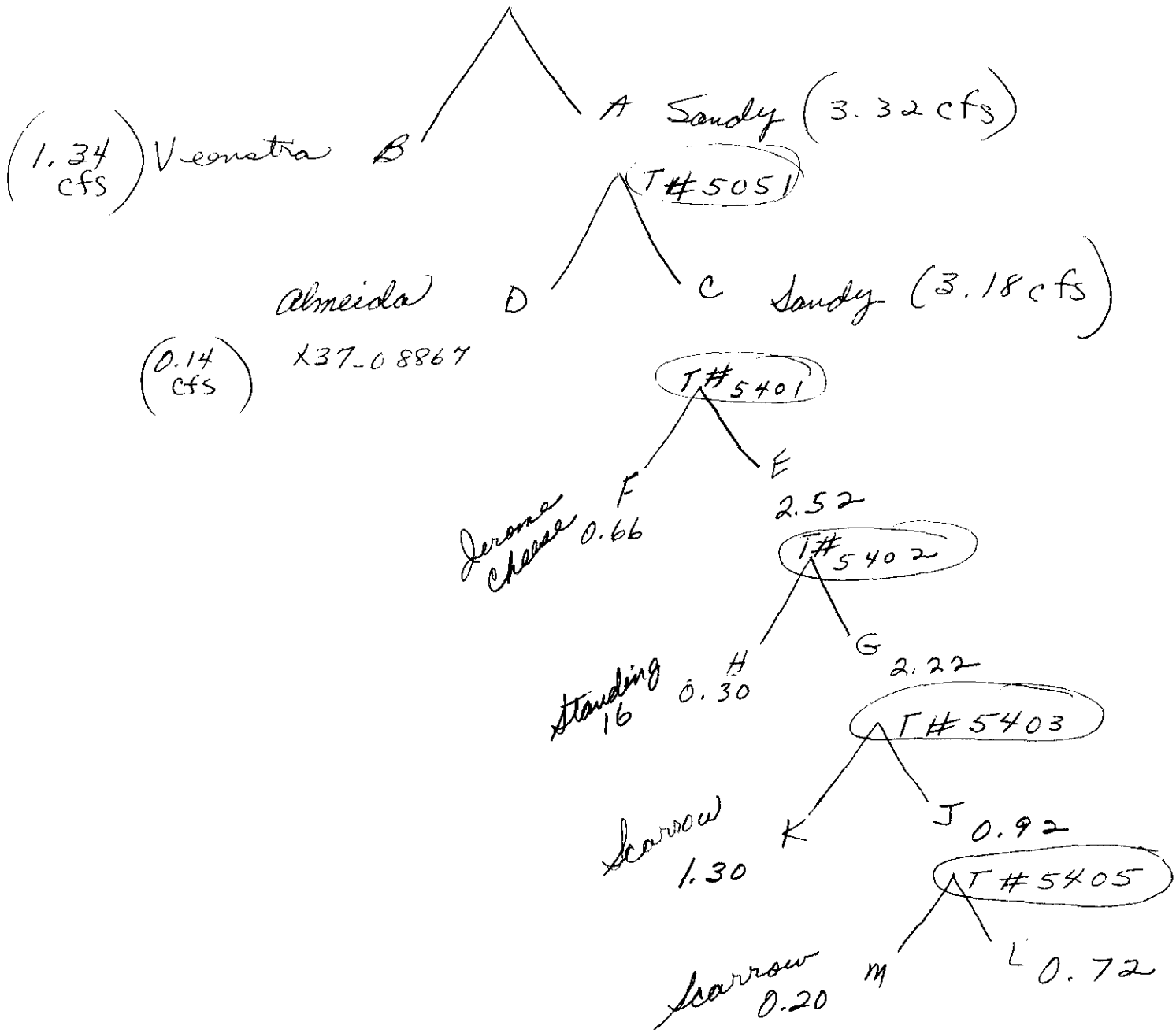
WR5747NP IDAHO DEPARTMENT OF WATER RESOURCES DATE: 02/23/99
W R RIGHTS NUMBER INDEX PAGE: 1

WATER RIGHT NUMBER	NAME	CFS
36-07337	SPLIT INTO 36-07337A & B.	
36-07337A	SANDY , W A	3.32
36-07337B	VEENSTRA , BUTCH	1.34

WR5747NP IDAHO DEPARTMENT OF WATER RESOURCES DATE: 02/23/99
WATER RIGHTS NUMBER INDEX PAGE: 1

WATER RIGHT NUMBER	NAME	CFS
X36-07337A	RIGHT SPLIT INTO PARTS C & D THRU APPROVED TRANSFER 5051.	
X36-07337C	SANDY , JOHN A SANDY , WILLIAM A SANDY , FLORENCE M	3.18
X36-07337D	SEE RIGHT NO. X37-08867	

36_07337



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JUL 26 2000

SD-0862-2 Basin: 36 Starting Right Number: 07337

S E L	Trans No.	Last Name	S T	Status Date	Call-Up Date	Affected Rights	Proposed Rights
_	5051	ALMEIDA	A	11/12/1997	00/00/0000	36-07337A	36-07337C 36-07337D

(Enter=Continue) (GOLD 7=This Query) (Menu _____)

Page _____ of _____ TRANS NO.

PART 2

A. DESCRIPTION OF RIGHT AS RECORDED:

Water Right No. **X36-07337D**
This right has an invalid stage

BENEFICIAL USE	PERIOD OF USE	DIVERSION RATE

Priority: 00/00/0000

PLACE OF USE: See Remarks

CONDITIONS/REMARKS:
1. SEE RIGHT NO. 37-08867

Page _____ of _____ TRANS NO.

PART 2

A. DESCRIPTION OF RIGHT AS RECORDED:

Water Right No. **X37-08867**

STAGE: **LICENSE**

BENEFICIAL USE	PERIOD OF USE	DIVERSION RATE	ANNUAL VOLUME
STOCKWATER	01/01 to 12/31	0.14 CFS	26.7 AF
COMMERCIAL	01/01 to 12/31	0.14 CFS	1.3 AF
	Totals	0.14 CFS	28.0 AF

SOURCE

GROUNDWATER

Priority: 11/25/1977

LOCATION OF POINT(S) OF DIVERSION: SENW , Sec. 1, Township 06S, Range 15E
GOODING County

PLACE OF USE: STOCKWATER

TWN	RGE	SEC		
06S	15E	1	SWNE	SENW

PLACE OF USE: COMMERCIAL

TWN	RGE	SEC	
06S	15E	1	SENW

CONDITIONS/REMARKS:

1. This permit does not authorize the construction of any new well or the deepening or enlargement of any existing well.
2. The right holder shall accomplish the change authorized by this transfer within one (1) year of the date of this approval.
3. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
4. Approval of this transfer does not preclude the opportunity for review of the validity of the water right(s) in the ongoing Snake River Basin Adjudication.
5. The proposed dairy operation under this approval shall comply with applicable zoning and use ordinances of Gooding County.
6. Use of water under this approval shall comply with applicable water quality standards of the Division of Environmental Quality of the Idaho Department of Health and Welfare.

Water Right No. X37-08867

7. The remainder of Right No. 36-07337A is identified as 36-07337C and is limited to a diversion rate of 3.18 cfs and an annual diversion volume of 636.0 af at the field headgate, and the irrigation of 159.0 acres each year.
8. The acres which are no longer authorized for irrigation under Right No. 36-07337C are specifically described as follows: 7.0 acres within NESW, S05, T08S, R14E.
9. Rights 36-07337D and SRBA Claim A37-13385 when combined shall not exceed a total annual diversion volume of 42.6 af, subject to further modification under final recommendation of the claim.
10. Commercial use is for a dairy.

SD-0611-2 Basin: 36 Starting Water Right: 0733.

S E L	Water Right No.	Name Last, First	O W N	Priority Date	STG/ STS	Source	Use Desc	S Y S
_	36-07337			00/00/0000	/Z			WR
_	36-07337A	SANDY, W A	C	11/25/1977	L/	GROUNDWATER	IRR	WR
_	36-07337B	VEENSTRA, BUTCH	C	11/25/1977	L/	GROUNDWATER	IRR	WR
_	X36-07337A			00/00/0000	/Z			WR
_	X36-07337C	SANDY, JOHN A	C	11/25/1977	L/	GROUNDWATER	IRR	WR
_		SANDY, WILLIAM A	C					
_		SANDY, FLORENCE M	C					
_	X36-07337D			00/00/0000	/Z			WR
_	36-07337	SPLIT CLAIM	C	02/10/1955	/Z	GROUNDWATER SPLIT CLAIM	IRR	AJ
_	36-07337A	SANDY, JOHN A	C	11/25/1977	D/	GROUNDWATER	P DECR	AJ
_		SANDY, FLORENCE M	C					
_		SANDY, WILLIAM A	C					
_	36-07337B	VEENSTRA, BUTCH	C	11/25/1977	D/	GROUNDWATER	P DECR	AJ
_	A36-07337	SPLIT CLAIM	C	02/10/1955	/Z	GROUNDWATER	IRR	AJ

* Decreed copied to Water Right Database (G6=Print Profile Rpt) (G8=Cancel)
(Enter=Continue) (G1=Print Screen Query) (G7=This Query) (Menu _____)

SD-0611-2 Basin: 36 Starting Water Right: 0733.

S E L	Water Right No.	Name Last, First	OWN	Priority Date	STG/ STS	Source	Use Desc	SYS
_	A36-07337			02/10/1955	/Z	SPLIT CLAIM		AJ
_	A36-07337A	SANDY, WILLIAM A	C	11/25/1977	P/	GROUNDWATER	IRR	AJ
_		SANDY, FLORENCE M	C					
_		SANDY, JOHN A	C					
_	A36-07337B	VEENSTRA, BUTCH	C	11/25/1977	P/	GROUNDWATER	IRR	AJ

* Decreed copied to Water Right Database (G6=Print Profile Rpt) (G8=Cancel)
(Enter=Continue) (G1=Print Screen Query) (G7=This Query) (Menu _____)

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

Rex Minchey
PO Box 485
Jerome, ID 83338

Dear Mr. Minchey:

As we discussed last friday by phone, there appears to have been a communication breakdown in your conversations with Gary Funderburg of our office over describing amounts of water. Although Gary correctly converted your daily gallons of use into terms of "miner's inches"; in your particular situation, that number is meaningless when attempting to purchase an irrigation water right. This appears to be a classic example of the problem inherent in describing a water use or right in **only** terms of "miner's inches". As you now know the other elements of water use which include: "annual volume" and "consumptive use volume" are especially important to be considered when transferring or marketing water rights. I apologize for the response you got from your initial contact with our office. I trust your dealings with Jim Stanton will be more informative. I understand from Jim he has talked with you by phone and written you a letter outlining various options for your consideration.

Sincerely

Allen Merritt, PE
Southern Region Manager

cc: Jim Stanton
Gary Funderburg

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T # 5401

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 21, 1998

Jerome Cheese Co.
ATTN: Rex Minchey
PO Box 485
Jerome, ID
83338

FAXED THIS DATE

Dear Mr. Minchey;

I have discussed your situation with Norm Young, the assistant director of this Department. He made several suggestions regarding this project. You could file an application for a water transfer to convert a water right from irrigation to commercial/industrial use, which is what you started to do last Friday; such a transfer would provide all the water that you need for your expanded operation, 478.3 acre feet per year. The City of Jerome could file an application for transfer to add a well on your property to the City's water rights, in which case the use would remain municipal. You could apply for a transfer to convert a portion of the needed water to commercial/industrial uses, with a mitigation plan involving your wastewater. Or you could file an application for a water permit with a mitigation plan. A permit can be approved if the use is shown to be non-consumptive to the Eastern Snake Plain Aquifer; dumping your wastewater into the canal system does not satisfy this requirement, however. And due to water-quality concerns, we would not encourage injection of your wastewater back into the aquifer. An engineering firm experienced in water management may be able to assist you in developing a mitigation plan.

If I can be of further assistance, feel free to contact me.

Jim

James E. Stanton
Sr. Water Resource Agent

cc: Allen Merritt, IDWR
Gary Funderburg, IDWR

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TO: Allen DATE: December 18, 1998

FROM: Jim Stanton

SUBJECT: App. for Transfer, Jerome Cheese Co.

Today I met with Rex Minchey, maintenance manager for this company. He had previously talked at length with Gary in order to determine how much water would be needed to operate their plant with their own well. They are presently served by the Jerome water system, but want to provide their own water in the future. City water will remain as a backup source. I talked to Gary & John Sandy about this transfer, but was only told that 33 inches of X36-07337C would be sold. I was not asked to determine how much water would be needed, and did not see Gary's calculations. I looked up John's water right, and he told me which 33 acres would be dried up.

Mr. Minchey told me how much water they have been using, which was 347.4 AFA. They have started a major development that will increase usage to 478.3 AFA based on the deal with John for the 33 inches. This flow rate will provide the needed volume if pumped continuously all year long, but it turns out that transferrable volume is the limiting factor. The 33 inches/acres (right is 1"/acre) will only provide 1/5 of the needed volume. So having to purchase the additional water right will considerably increase the cost of this project. Mr. Minchey was polite, but understandably mad as hell over the bad information he got from Gary. He wanted to talk to you, but you were in an interview. I promised him that I would have you call him as soon as the interview was over. His office is 324-8806, and his cell phone is 731-1615. I apologized on behalf of the Department, but that doesn't solve his problem. I also left Gary a message to call him ASAP.

Magic Valley Maid

J. REX MINCHEY
MAINTENANCE MANAGER

JEROME CHEESE CO.
MANUFACTURERS OF QUALITY CHEESE
AND OTHER DAIRY INGREDIENTS

P.O. BOX 485
JEROME, IDAHO 83338

208-324-8806
FAX 208-324-8892

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2 6 2002

T# 5401

Rex Minchey

From: Jim Ward
Sent: Friday, December 11, 1998 7:52 AM
To: Rex Minchey
Subject: RE: LEGAL DISCRIPTION FOR THE JEROME CHEESE PROPERTY

Rex,

The following should be what you need. Any questions call.

Property Tax Description:

Lot 1 Blk 2
Jerome South Industrial Park
(25-8-16)
17.9 Acres

Legal Discription:

A portion of the N. 1/2
Section 25, T.8 S., R.16 E., B.M.
Jerome County, Idaho

Thanks,

Jim

----Original Message----
From: Rex Minchey
Sent: Thursday, December 10, 1998 7:26 PM
To: Jim Ward
Cc: Jon Davis
Subject: LEGAL DISCRIPTION FOR THE JEROME CHEESE PROPERTY

JIM
AS YOU MUST KNOW WE ARE PURCHASING WATER SHARES FOR THE PURPOSE OF INSTALLING OUR OWN WELL. AS PART OF THE WATER SHARE TRANSFER WE NEED THE LEGAL PROPERTY DESCRIPTION OF THE PROPERTY HERE AT JEROME CHEESE.
CAN YOU FORWARD IT TO ME OR DIRECT ME TO WHERE, SHORT OF THE LOCAL COURT HOUSE, WHERE WE MAY GET IT.

THANK YOU
REX.

MICROFILM

W # 5401

THE CITY OF JEROME

City Hall
152 East Avenue A
Jerome, Idaho 83338
(208) 324-8189

December 2, 1998

To Whom It May Concern,

The City Of Jerome Water Department has provided Jerome Cheese with 15,133,500 [redacted] cubic feet of water for the period of October 28, 1997 to October 28, 1998. If there are any questions regarding your water consumption, please feel free to call the Water Department at 324-8189.

Yours sincerely,

City of Jerome Water Department

CERTIFICATE OF LIMITED PARTNERSHIP

FILED

To the: STATE OF IDAHO SECRETARY OF STATE
CORPORATIONS DIVISION
PHONE: (208) 334-2301 FAX: (208) 334-2847
700 W JEFFERSON PO BOX 83720 BOISE ID 83720-0080

1. The name of the limited partnership is: Mountain and Valley Properties L.P.

2. The name and business address of the registered agent are:

Gregory A. Byron, 1101 W. River Street, Suite 340, Boise, ID 83702
(not a P.O. Box)

3. The name and business address of each general partner are:

Name	Address
Habitat Holdings L.L.C.	3104 South 1200 East, Hagerman, ID 83332

(If more space is needed, continue in item 5.)

4. The latest date on which the partnership will dissolve is: December 31, 2033

5. Other matters (optional):

6. Signatures of all general partners:

Habitat Holdings L.L.C., General Partner
By John Sandy, Sole Member

IDAHO SECRETARY OF STATE
Secretary of State use only
11/06/1998 09:00
CK: 3513 CT: 44531 BH: 159594
1 @ 100.00 = 100.00 LTD PTR DM # 4

L 3899

g/corp/forms/CLP.pmb
File in Duplicate Original

Fee: $100 if typed with no attachments
$120 if not typed or if attachments are included

CRAIG D. HOBDEY
ATTORNEY AT LAW

LAW OFFICES OF
HOBDEY & HOBDEY
(208) 934-4429

125 FIFTH AVENUE WEST
P. O. BOX 176
GOODING, ID 83330

LAWSON PRODUCTS, INC.

2350	PINEHURST	ADDISON, ILLINOIS	60101	(630) 916-9920
THE	QUADRANT	BRISTOL, ENGLAND	BS12 4QU	0454-202-223
4335	BELTWOOD PARKWAY NO.	DALLAS, TEXAS	75244	(972) 387-4860
28	INDUSTRIAL ROAD	FAIRFIELD, NEW JERSEY	07004	(973) 227-2720
7315	RAPISTAN COURT	MISSISSAUGA, ONT. CAN.	L5N 5Z4	(905) 567-1717
6080	NORTHBELT DRIVE	NORCROSS, GEORGIA	30071	(770) 441-3211
1361	CAPITAL BOULEVARD	RENO, NEVADA	89502	(702) 856-1381

1000 gpm @ 350,000 gal/Day

74.16 KW/HR / 1000 gal/min

5.8 Hours /Day

$4,765.00 Per year for Pump Volume of water

38 KW /HR / Pressurizing System

for 6643 HRS/1 year

$ 7,373.73 /year To Pressurize System

INDUSTRIAL & AUTOMOTIVE FASTENERS & PARTS
Corporate Headquarters
1666 E. TOUHY AVENUE, DES PLAINES, ILLINOIS 60018 (847) 827-9666

MICRO

T #5401

AJ

37-4419

2076

2653

02480

Brent Stanger

10464

10468

347.4 AF

478.3 AFA

159.4 ac

1 million gallons/day wastewater

375,000 to city

about same to canal

canal discharge is drinkable, city discharge is treated, then

T#5401

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

TRANSFER OF WATER RIGHT

TRANSFER NO. 5401
WATER RIGHT NO. 36-07337F

This is to certify that: **JEROME CHEESE CO**
PO BOX 485
JEROME ID 83338

has requested a change to the above captioned water right(s). This change in water right(s) is authorized pursuant to the provisions of Section 42-222, Idaho Code, provided the conditions listed below are met.

BENEFICIAL USE	PERIOD OF USE	DIVERSION RATE	ANNUAL VOLUME
COMMERCIAL	01/01 to 12/31	0.66 CFS	99.0 AF

SOURCE

GROUNDWATER

Priority: 11/25/1977

LOCATION OF POINT(S) OF DIVERSION: NWNE , Sec. 25, Township 08S, Range 16E
JEROME County

PLACE OF USE: COMMERCIAL

TWN	RGE	SEC	
08S	16E	25	NWNE

CONDITIONS OF APPROVAL AND REMARKS

Right 37-07337F is subject to the conditions of the Preliminary Order in the matter of Application for Transfer 5401.

Dated this 15th day of November, 1999.

Chief, Water Allocation Bureau

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JUL 25 2000

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

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

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

FINDINGS OF FACT

1. On February 13, 1992, the Department issued License No. 36-07337A as follows:

Source:	Ground water
Priority:	November 25, 1977
Rate of diversion:	3.32 cubic feet per second ("cfs")
Volume:	664 acre feet per year ("afy")
Point of diversion:	NE1/4SW1/4 and NW1/4SE1/4, Section 5, T8S, R14E, B.M.
Use:	Irrigation
Season of use:	March 15 to November 15
Place of use:	166 acres within parts of Section 5, T8S, R14E, B.M.

On December 29, 1997, The Snake River Basin Adjudication ("SRBA") court entered a partial decree on the right decreeing the right to John A. Sandy and Florence M. Sandy.

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

2. On November 12, 1997, the Department approved Transfer No. 5051 in the name of Alvina Almeida and Dolor Almeida of a portion of License No. 36-07337A as follows:

Source:	Ground water
Priority:	November 25, 1977
Rate of diversion:	0.14 cfs
Volume:	28 afy

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JUL 26 2000

Point of diversion:	SENW Section 1, T6S, R15E, B.M.
Use:	Stockwater and commercial
Season of use:	Year-round
Place of use:	Stockwater - SWNE and SENW Section 1, T6S, R15E, B.M. Commercial - SENW - Section 1, T6S, R15E, B.M.
Remarks:	This part of the license has been renumbered to 37-08867.

3. The remaining part of License No. 36-07337A is identified as 36-07337C as follows:

Source:	Ground water
Priority:	November 25, 1977
Rate of diversion:	3.18 cfs
Volume:	636 afy
Point of diversion:	NESW, NWSE, Section 5, T8S, R14E, B.M.
Use:	Irrigation
Season of use:	April 1 to October 31
Place of use:	159 acres in Section 5, T8S, R14E, B.M. as follows: NESW - 9, NWSW - 1, SESW - 16, NESE - 33, NWSE - 33, SWSE - 34, and SESE - 33

4. On December 16, 1998, John A. Sandy ("Sandy") and Davisco Foods, Inc. ("Davisco") entered into a Memorandum of Agreement in which Sandy agreed to sell 33 miner's inches ("0.66 cfs") of water from License No. 36-07337C to Davisco.

5. On December 23, 1998, Jerome Cheese Company ("applicant") filed Application for Transfer No. 5401 ("application") with the Department seeking to change the point of diversion, place of use, season of use and nature of use of 0.66 cfs and 99 afy of water from irrigation use in Section 5, T8S, R14E, B.M. to year-round commercial use in a cheese plant ("plant") in the NWNE Section 25, T8S, R16E, B.M. The applicant proposes to drill two new wells in the NWNE Section 25, T8S, R16E, B.M. near the cheese plant and to dry up 33 acres located in the SWSE Section 5, T8S, R14E, B.M. to provide the water for the transfer.

6. The Department published notice of the Application which was subsequently protested by Bill Chisholm and Lee Halper ("protestants"). The city of Jerome ("city") did not file a timely protest to the application but on June 10, 1999, filed a Petition for Intervention and on June 16, 1999, filed an Amended Petition for Intervention. On July 2, 1999, the department issued an Order Denying Petition to Intervene filed by the city. On July 19, 1999, the city filed a Motion for Reconsideration of Order Denying Petition for Intervention and Alternatively Motion to File a Late Protest. On July 23, 1999, the department issued an Order Rejecting Motion for Reconsideration and Motion to File a Late Protest. The order, however, allowed the city to appear as a public witness as provided in IDAPA 37.01.01355 (Procedure Rule 355). A public witness is not a full party and does not have the right to file a petition for

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JUL 25 2000

reconsideration, a brief or exceptions in connection with a recommended order, a preliminary order or a final order issued by the hearing officer or by the Director.

7. Issues identified by the protestants are as follows:

a. The proposed changes will injure other water rights.

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

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

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

8. On July 27 and 28, 1999, the Department conducted a hearing in the matter in Twin Falls, Idaho. The applicant was present and was represented by Christopher Meyer and Mike Creamer. The protestants were present and represented themselves. The city did not appear at the hearing but on August 13, 1999, submitted written comments for consideration. On August 31, 1999, the applicant responded to the public witness comments of the city.

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

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

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

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

d. Applicant's Exhibit 4 - Snake Plain Aquifer

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

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

g. Applicant's Exhibit 7 - NOT OFFERED

h. Applicant's Exhibit 8 - NOT OFFERED

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JUL 26 2000

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

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

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

l. Applicant's Exhibit 12 - NOT OFFERED

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

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

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

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

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

r. Applicant's Exhibit 18 - GIS map of Section 5

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

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

10. The city provides approximately 347 afy to 392 afy of water for use in the cheese plant and has provided water since 1993. The applicant wants to provide water to the plant from its own wells due to concerns about water quality (sediment), water pressure and the cost of water provided by the city but may continue to use water available from the city as a backup source.

11. The application would provide water from 33 acres to be dried up within the SWSE Section 5, T8S, R14E, B.M. with a rate of up to 0.66 cfs, an annual consumptive volume of 99 af and an annual diversion volume of 132 af. Evidence and testimony showed that the 33 acres has been irrigated within the last five (5) years as authorized by the license. In the fall of 1997, the Northside Canal Company constructed a water quality improvement pond within the 33 acre tract taking a portion of the 33 acres out of irrigation.

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JUL 26 2000

12. The water sought under this application is in addition to the amount of water sought under Application for Transfer No. 5436 which was also filed in the name of Jerome Cheese Company.

13. The proposed new wells are located upgradient of the licensed wells by approximately 16 miles. One well has been designed with a 12" diameter bore to a total depth of about 400 feet. The proposed surface seal is a 20" diameter initial bore to a depth of 80 feet with a 16" diameter casing to be installed in the 20" hole. The design discharge is 1,000 gallons per minute. The design has been reviewed and approved by the Division of Environmental Quality, Idaho Department of Health and Welfare. The second well has not been designed yet, since one well may provide the amount of water needed.

14. The applicant employs about 150 people at its cheese plant and has an annual payroll and salaries of about 4 million dollars. The applicant also pays about $300 million dollars annually to dairies located in five Idaho counties.

15. The applicant has designed its water system to incorporate both city water and water from the proposed new well(s) in its plant. The city has reviewed plans of the applicant's water system and has the opportunity to require compliance with city construction standards for changes to the city's water distribution system. The applicant has reviewed the need for other permits and is in the process of obtaining approvals which will be required in connection with the changes proposed in the application.

16. The applicant recycles and reuses water in its plant reducing the amount of water needed by the plant to about one-tenth of the amount needed if reuse and recycling were not practiced.

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

18. None of the protestants own water rights which would be injured by the proposed transfer or have shown that water rights of others would be injured.

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

20. The applicant is authorized to use the wastewater treatment facility of the city for the discharge of effluent from its cheese plant and by agreement with the

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Northside Canal Company at times discharges effluent to the canal company ditches. Water discharged to the Northside Canal Company is monitored to meet Idaho Water Quality standards.

21. The Industrial User Agreement between the city and the applicant authorizes the maximum daily discharge of 458,000 gallons per day to the city's water treatment facility. Present discharge to the wastewater treatment facility is about 350,000 gallons of effluent per day.

CONCLUSIONS OF LAW

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

> The director of the department of water resources shall examine all the evidence and available information and shall approve the change in whole, or in part, or upon conditions, provided no other water rights are injured thereby, the change does not constitute an enlargement in use of the original right, and the change is consistent with the conservation of water resources within the state of Idaho and is in the local public interest as defined in section 42-203A(5), Idaho Code; ....

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

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

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

5. The change proposed in the application will not injure other water rights, since pumping at the proposed well site will have a limited drawdown effect on other wells in the area and the impact of pumping at the proposed well site will not have a substantially different affect on the Snake River as pumping at the licensed site.

6. When considering the enlargement in use issue, the analysis applies to the right sought for transfer, not to the municipal rights of the city of Jerome. The rate of diversion, consumptive volume and diversion volume for the new use will not exceed the amounts authorized under the part of License No. 36-07337C being transferred.

7. The applicant's use of water from its own proposed well with an alternate or back-up source of water provided by the city does not constitute an enlargement in

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use.

8. The applicant is authorized to discharge effluent from its cheese plant to the wastewater facility of the city and is not required to seek separate approval for the discharge. The applicant also has approval of the Northside Canal Company to discharge effluent to its system.

9. Section 42-203A , Idaho Code, defines "local public interest" as the affairs of the people in the area directly affected by the **proposed use**, which in this case, is "commercial" use in a cheese plant. The application further describes that water will be used for washing processing equipment, cheese washing during production and restrooms. Use of water by dairies or cows is not a part of the **proposed use**.

10. The changes proposed in the application are in the local public interest.

11. The proposed changes are consistent with the conservation of water resources within the state of Idaho.

12. The Department should approve the application with certain conditions.

ORDER

IT IS THEREFORE, hereby ORDERED that Transfer No. 5401 in the name of Jerome Cheese Company is **APPROVED** subject to the following conditions:

1. Use of water under this approval shall comply with applicable water quality standards of the Division of Environmental Quality of the Idaho Department of Health and Welfare.

2. The right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code.

3. Prior to diversion of water under this approval, the right holder shall provide a means of measurement acceptable to the Department from all authorized points of diversion which will allow determination of the total rate of diversion and the total volume of water diverted under the transfer.

4. The right holder shall measure and annually report to the West Water Measurement District of the Eastern Snake Plain Aquifer the annual volume of water diverted under this approval and the maximum rate of diversion.

5. Prior to use of water under this approval, the right holder shall provide assurance to the Department of how and when the 33 acres in the SWSE Section 5, T8S, R14E, B.M. are dried up. The right holder is not

authorized to divert water under this approval if the 33 acres are being irrigated.

6. The use authorized under this approval shall comply with applicable county zoning and use ordinances.

7. The right holder shall accomplish the change authorized by this transfer within one (1) year of the date of this approval.

8. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.

9. The total instantaneous rate of diversion of water from all points of diversion under this transfer shall not exceed 0.66 cfs, nor a total annual volume of 99 acre feet.

Remarks:

1. Commercial use is for a cheese plant.

2. Two points of diversion are located in the NWNE Section 25, T8S, R16E, B.M.

Signed this 12th day of October, 1999.

L. GLEN SAXTON
Hearing Officer

CERTIFICATE OF SERVICE

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

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Julie L. Yarbrough

JULIE L. YARBROUGH, Administrative Assistant
Water Allocation Bureau

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BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF PETITION TO INTERVENE IN APPLICATION FOR TRANSFER NOS. 5401 AND 5436 IN THE NAME OF JEROME CHEESE COMPANY	**ORDER REJECTING MOTION FOR RECONSIDERATION AND MOTION TO FILE A LATE PROTEST**

On July 2, 1999, the hearing officer for the Department of Water Resources (Department) in the above captioned matter issued an Order Denying Petition to Intervene filed by the city of Jerome ("petitioner") advising that:

1. The petition was not timely filed, the petitioner had failed to show good cause for the untimely filing and that the petitioner had ample opportunity to protest the applications and to become a party to the matter, and

2. The petitioner had not shown that granting the petition would not broaden the issues to be heard in the scheduled hearing.

On July 19, 1999, the petitioner filed a Motion for Reconsideration of Order Denying Petition for Intervention and Alternatively, Motion to file a Late Protest.

On July 20, 1999, Jerome Cheese Company ("applicant") filed Applicant's Response to City of Jerome's Motion for Reconsideration.

There are no applicable provisions in IDAPA Rules 37.01.01 for the filing of a Motion for Reconsideration of an order denying a petition for intervention or for a motion to file a late protest. The motions should be denied.

Section 42-222, Idaho Code, requires the Department to evaluate all evidence and available information in connection with an application for transfer to assure that a proposed transfer: a) will not injure other water rights; b) will not constitute an enlargement in use; c) is consistent with the conservation of water resources within Idaho; and d) is in the local public interest. The Department is required to perform this evaluation whether or not a petition to intervene is denied.

Therefore, although the Department will deny the petitioner's petition to intervene, the petitioner will be allowed twenty-one (21) days from the service date of this order to submit any information to the Department which the petitioner believes to

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be pertinent to the Department's evaluation of the applications for transfer. If the petitioner submits such information, the petitioner shall also provide a copy of the information to the applicant who shall then be allowed twenty-one (21) days to submit a response to the Department regarding the information. After reviewing any information submitted by the petitioner and any response submitted by the applicant, the Department may subsequently conduct a fact-finding hearing, if the Department determines such a hearing is necessary.

ORDER

IT IS THEREFORE HEREBY ORDERED that the Motion for Reconsideration of Order Denying Petition for Intervention and Alternatively, Motion to file a Late Protest submitted by the city of Jerome are **DENIED**.

IT IS FURTHER ORDERED that the petitioner is **GRANTED** the opportunity to appear as a public witness in the above captioned matter as provided in IDAPA 37.01.01355 (Procedure Rule 355) if the petitioner so chooses.

Dated this 23rd day of July, 1999.

L. GLEN SAXTON
Hearing Officer

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CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that on this 23rd day of July, 1999, the above and foregoing document was served upon the following by placing a copy of the same in the United States Mail, postage prepaid and properly addressed to the following:

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Julie L. Yarbrough

JULIE L. YARBROUGH, Administrative Assistant
Water Allocation Bureau

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BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR TRANSFER NO. 5401 AND 5436 IN THE NAME OF JEROME CHEESE COMPANY	)))))	**ORDER DENYING MOTIONS**

On July 20, 1999, protestant Lee Halper ("Halper") filed by FAX three (3) motions as follows:

1. Motion to Compel Response to Discovery, Request for Production of Documents and Interrogatories with a requested hearing on the motion,

2. Motion to Continue Hearing, and

3. Motion to Disqualify Hearing Officer.

The hearing officer responds to the motions as follows:

1. Both the applicant and protestants have provided evidence of responses to interrogatories to the hearing officer. Based upon a review of the file, including the Order Authorizing Discovery and the applicant's responses to protestants' discovery, the hearing officer is not persuaded that an order compelling further response to discovery is justified. The hearing officer declines to set this motion for separate hearing.

2. The department did issue subpoenas at the request of protestant Halper. Prior to the issuance of the subpoenas, the hearing officer asked protestant Halper to specifically identify the documents, reports, studies and fact sheets sought from each party for which a subpoena was requested. Halper did not provide the requested information and failed to comply with the request. The scheduled hearing should not be continued.

3. IDAPA 37.01.01412 (Procedure Rule 412) provides in part that

> "Any party may promptly petition for the disqualification of a hearing officer after receiving notice that the officer will preside at a contested case or upon discovering facts

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establishing grounds for disqualification, whichever is later."

In connection with the alleged causes in the motion for disqualification, the hearing officer responds to each as follows:

1. The hearing officer has limited desired witnesses, documents, information and facts of the protestant and has reached decisions favorable to the applicant:

   See response to item 2 above. Halper also appears to be objecting to the issuance of a subpoena in the name of Lewis Eilers which was requested by Halper.

2. The hearing officer has improperly limited public interest issues in favor of the applicant:

   The only limit described by the hearing officer to all parties is that the local public interest testimony and evidence be associated with the "proposed use" as described in Section 42-203A, Idaho Code. The "proposed use" of water in the instant case is in connection with a cheese factory, not dairies, cows or other uses of water.

3. The hearing officer has already determined the outcome of the contested matter:

   The hearing officer has asked Halper to cease and desist sending E-mail transmissions to personnel within the department due to the appearance of ex-parte communications.

4. The hearing officer has not enforced a time line associated with completing discovery and hence has disregarded the rights of the protestants:

   Halper was not prejudiced by submittal of responses to discovery after the initial time line established, since the hearing scheduled for June 8, 1999, was rescheduled to July 27, 1999 providing sufficient time for Halper to review the responses prior to a hearing.

Halper was aware of the identity of the hearing officer since May 7, 1999. A motion for disqualification submitted on July 20, 1999, is not "prompt" and should be rejected. Alleged familiarity between the applicant and hearing officer and alleged ex-parte communications between the applicant and hearing officer has no basis and is folly.

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ORDER

IT IS THEREFORE, HEREBY ORDERED that the motions of protestant Lee Halper described above are **DENIED**.

Dated this 23rd day of July, 1999.

L. GLEN SAXTON
Hearing Officer

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I DO HEREBY CERTIFY that on this 23rd day of July, 1999, the above and foregoing document was served upon the following by placing a copy of the same in the United States Mail, postage prepaid and properly addressed to the following:

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Julie L. Yarbrough

JULIE L. YARBROUGH, Administrative Assistant
Water Allocation Bureau

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

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

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

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

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

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

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

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

ORDER

IT IS THEREFORE, HEREBY ORDERED as follows:

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

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

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

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

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

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

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

Dated this 1st day of July, 1999.

L. GLEN SAXTON
Hearing Officer

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CERTIFICATE OF SERVICE

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

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LEE HALPER
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JEROME ID 83338

BILL CHISHOLM
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BUHL ID 83316

MICHAEL IHLER
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DARCY THORNBORROW
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Julie L. Yarbrough

JULIE L. YARBROUGH, Administrative Assistant
Water Allocation Bureau

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BEFORE THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

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

THE STATE OF IDAHO TO: SCOTT BYBEE

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

DATED this 1st day of July, 1999.

By order of the Director.

KARL J. DREHER, Director

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BEFORE THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

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

THE STATE OF IDAHO TO: LEWIS EILERS

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

DATED this 1st day of July, 1999.

By order of the Director.

KARL J. DREHER, Director

BEFORE THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

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

THE STATE OF IDAHO TO: BRAD GILMORE

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

DATED this 1st day of July, 1999.

By order of the Director.

KARL J. DREHER, Director

BEFORE THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

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

THE STATE OF IDAHO TO: MIKE MCMASTERS

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

DATED this 1st day of July, 1999.

By order of the Director.

KARL J. DREHER, Director

BEFORE THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

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

THE STATE OF IDAHO TO: KEN NEELY

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

DATED this 1st day of July, 1999.

By order of the Director.

KARL J. DREHER, Director

BEFORE THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

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

THE STATE OF IDAHO TO: MARV PATTEN

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

DATED this 1st day of July, 1999.

By order of the Director.

KARL J. DREHER, Director

BEFORE THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

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

THE STATE OF IDAHO TO: JOHN SANDY

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

DATED this 1st day of July, 1999.

By order of the Director.

KARL J. DREHER, Director

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BEFORE THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

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

THE STATE OF IDAHO TO: MARJ SCHMIDT

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

DATED this 1st day of July, 1999.

By order of the Director.

KARL J. DREHER, Director

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BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

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

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

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

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

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

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

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

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

ORDER

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

Dated this 2nd day of July, 1999.

L. GLEN SAXTON
Hearing Officer

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CERTIFICATE OF SERVICE

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

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BUHL ID 83316

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Julie L. Yarbrough

JULIE L. YARBROUGH, Administrative Assistant
Water Allocation Bureau

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BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR TRANSFER NO. 5401 AND 5436 IN THE NAME OF JEROME CHEESE COMPANY	**NOTICE OF RESCHEDULED HEARING**

The Department of Water Resources (department) has scheduled a hearing in connection with Transfer No. 5401 to be held on June 8, 1999, in Twin Falls, Idaho.

On June 3, 1999, the parties to protested Application for Transfer Nos. 5401 and 5436 agreed that the hearing on June 8, 1999, should be canceled and that a combined hearing involving both applications for transfer should be held in July 1999.

ORDER

By service of this Notice of Rescheduled Hearing, the hearing presently scheduled for June 8, 1999 is **VACATED** and is **RESCHEDULED** to include both Application for Transfer Nos. 5401 and 5436 as follows:

Date:	July 27 and 28, 1999
Time:	9:00 a.m.
Place:	Obenchain Community Room 264 Main Ave South Twin Falls, ID

The hearing will be held in accordance with provisions of Chapters 2 and 17, Title 42, Chapter 52, Title 67, Idaho Code, and the adopted Rules of Procedure of the department. A copy of the rules may be obtained from the department upon request. The presiding officer at the hearing will be L. Glen Saxton.

If you plan to offer exhibits for the record, note that IDAPA Rule of Procedure 37.01.01606 requires that you provide a copy of exhibits to each party and to the presiding officer.

The hearing will be conducted in a facility which meets the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the hearing, please advise the department within (10) days prior to the hearing. Parties to the matter will have the opportunity to respond and present information and argument on all issues involved.

Dated this 4th day of June, 1999.

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L. GLEN SAXTON, Hearing Officer

CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that on this 4th day of June, 1999, the above and foregoing document was served upon the following by placing a copy of the same in the United States Mail, postage prepaid and properly addressed to the following:

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Julie L. Yarbrough

JULIE L. YARBROUGH, Administrative Assistant
Water Allocation Bureau

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BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR TRANSFER NO. 5401 IN THE NAME OF JEROME CHEESE CO.	))))	**ORDER DENYING MOTION TO RESET HEARING TIME**

On May 7, 1999, the Department of Water Resources ("department") scheduled a hearing on the above captioned matter at 9:00 a.m. on June 8, 1999, at the Obenchain Community Room, 264 Main Avenue South in Twin Falls, Idaho.

On May 28, 1999, Jerome Cheese Company filed with the department Applicant Jerome Cheese Company's Motion to Reset Hearing Time ("motion"). The motion sought a change in the hour of the hearing from 9:00 a.m. to 8:00 a.m.

On June 1, 1999, protestant Lee Halper filed with the department Protestant's Objection to Applicant's Motion to Reset Hearing Time.

There are alternative means by which the applicant can provide the testimony of a witness for consideration in the contested matter.

Due to the alternatives available to offer testimony and to the short time available until the hearing which is scheduled on June 8, 1999, it is not reasonable to change the hour of hearing. The department should deny the motion.

ORDER

IT IS THEREFORE, HEREBY ORDERED that the motion of the Jerome Cheese Company to change the hour of the hearing from 9:00 a.m. to 8:00 a.m. on June 8, 1999, is **DENIED**.

Dated this 2nd day of June, 1999.

L. Glen Saxton

L. GLEN SAXTON
Hearing Officer

CERTIFICATE OF SERVICE

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

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

LEE HALPER
331 S 230 W
JEROME ID 83338

BILL CHISHOLM
19073 E HWY 30
BUHL ID 83316

Julie L. Yarbrough

JULIE L. YARBROUGH
Senior Secretary, Water Allocation Bureau

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

INTHE MATTER OF APPLICATION FOR TRANSFER NO. 5401 IN THE NAME OF JEROME CHEESE CO.	))))	**ORDER ON MOTION TO ISSUE SUBPOENAS**

On May 26, 1999, the Department received a Motion to Issue Subpoenas from protestant Lee Halper requesting that the Department issue 24 subpoenas requiring the attendance of a variety of state and municipal government officials, state and federal agency personnel, and other individuals to appear at the hearing in the above matter scheduled for June 8, 1999 at 9:00 a.m. in Twin Falls, Idaho. The Department received a written objection to the request for subpoenas from the applicant Jerome Cheese on May 28, 1999.

Rule 525 of the Department's Rules of Procedure provides that, "The agency may issue subpoenas upon a party's motion or upon its own initiative." IDAPA 37.01.01525. The Department should not issue a subpoena requiring a person's attendance at a hearing unless it is reasonably evident to the Department that the person's testimony would be relevant to the proceeding, or unless the requesting party has made a satisfactory showing that the testimony of the witness would be relevant to a material issue and would not be merely repetitive of the testimony of other witnesses.

In this instance, protestant Halper has asked the Department to issue subpoenas for a list of 24 persons. Most of these persons are elected officials and government employees who do not appear to be persons with information or knowledge that is relevant to the specific issues to be considered at the hearing. Halper has not described the purpose or nature of the testimony sought to be elicited from these potential witnesses. Furthermore, because the hearing is presently scheduled for one day it appears unlikely that this many witnesses could be called in the time available for the protestant's case.

If, under the above parameters, the protestant finds it necessary to utilize a subpoena to compel the attendance of a witness at the hearing, a further motion making such request should be filed with the Department.

ORDER

IT IS THEREFORE, HEREBY ORDERED that the Motion to Issue Subpoenas submitted by protestant Lee Halper is **DENIED**.

Dated this 28th day of May, 1999.

L. GLEN SAXTON
Hearing Officer

MICROFILMED

CERTIFICATE OF SERVICE

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

VIA FACSIMILE & US MAIL

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

LEE HALPER
331 S 230 W
JEROME ID 83338

VIA US MAIL

BILL CHISHOLM
19073 E HWY 30
BUHL ID 83316

Julie L. Yarbrough

JULIE L. YARBROUGH
Senior Secretary, Water Allocation Bureau

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

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

On May 4, 1999, the Department conducted a pre-hearing conference in the above captioned matter to simplify and expedite the hearing process.

On May 6, 1999, the Department issued an order authorizing the parties in the matter to engage in discovery.

On May 17, 1999, the Department received a Motion For Order Allowing Electronic Hearing from Lee Halper (protestant) seeking "an order authorizing witnesses to participate by telephone or television or other electronic means."

On May 19, 1999, the applicant filed a Response in Opposition to Motion for Order Allowing Electronic Hearing.

On May 19, 1999, the protestant submitted an Amended Motion for Order Allowing Electronic Hearing and a Motion to Continue Hearing. On May 20, 1999, the applicant advised it was willing to continue the hearing date for Transfer No. 5401, if a date certain in early July could be agreed upon by the parties for a combined hearing involving Transfer No. 5401 and Transfer No. 5436. In a letter dated May 21, 1999, protestant Halper would not agree to a combined hearing.

The hearing officer has reviewed the motion for order to allow an electronic hearing and concludes that an electronic hearing may have utility in some pre-hearing conferences and scheduling matters but does not appear to be appropriate in a hearing where a complete, orderly hearing record must be compiled by the hearing officer.

In connection with the protestant's Motion to Continue Hearing, the Department conducted the pre-hearing conference and issued the discovery order well in advance of the hearing to provide sufficient time for the parties to prepare for hearing. Such preparations could include retaining counsel, notifying witnesses, engaging in and completing discovery, and requesting subpoenas. Hence, the hearing officer concludes that the Department has provided ample time for the protestant to prepare for the scheduled hearing and that a continuance is not appropriate.

ORDER

IT IS THEREFORE, HEREBY ORDERED that the Amended Motion for Order Allowing Electronic Hearing and the Motion to Continue Hearing submitted by protestant Lee Halper are **DENIED**.

Dated this 25th day of May, 1999.

L. GLEN SAXTON
Hearing Officer

CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that on this 25th day of May, 1999, the above and foregoing document was served upon the following by placing a copy of the same in the United States Mail, postage prepaid and properly addressed to the following:

VIA FACSIMILE & US MAIL

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

LEE HALPER
331 S 230 W
JEROME ID 83338

VIA US MAIL

BILL CHISHOLM
19073 E HWY 30
BUHL ID 83316

Julie L. Yarbrough

JULIE L. YARBROUGH
Senior Secretary, Water Allocation Bureau

MICRO

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

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

On April 13, 1999, Jerome Cheese Company ("applicant") requested the Department of Water Resources ("department") to issue an order authorizing discovery in connection with the above captioned matter. The department advised the applicant that the department would delay issuing such an order until after a conference was conducted in the contested matter.

On May 4, 1999, the department conducted a conference which did not resolve the matter.

The department hereby authorizes the parties to engage in discovery commencing with the date of this order. The parties shall complete discovery seven (7) days prior to the date of the hearing in this matter which has been tentatively scheduled on June 8 or 9, 1999. Discovery shall be conducted pursuant to IDAPA Rules 37.01.01520-532 (Rules of Procedure 520 through 532). The parties are directed to answer or otherwise respond to discovery in accordance with the department's Rules of Procedure and the Idaho Rules of Civil Procedure, as appropriate.

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

Dated this 6th day of May, 1999.

L. GLEN SAXTON
Hearing Officer

MICRO

CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that on this 7th day of May, 1999, the above and foregoing document was served upon the following by placing a copy of the same in the United States Mail, postage prepaid and properly addressed to the following:

Christopher H Meyer
GIVENS PURSLEY LLP
277 N 6th St STE 200
PO Box 2720
Boise ID 83701-2720

Bill Chisholm
19073 E HWY 30
Buhl ID 83316

Lee Halper
331 S 230 W
Jerome ID 83338

Julie L. Yarbrough

JULIE L. YARBROUGH
Senior Secretary, Water Allocation Bureau

MICRO[illegible]

12-92

Page 1 of 6

Transfer No. 5401

RECEIVED
DEC 23 1998
Department of Water Resources
Southern Region

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR TRANSFER OF WATER RIGHT
PART 1

Name of applicant Jerome Cheese Co. Phone 324-8806

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

A. PURPOSE OF TRANSFER

1. ☒ Change point of diversion ☒ Add diversion point(s) ☒ Change place of use
☒ Change nature of use ☒ Change period of use ☐ Other _____

2. Describe the reason for the proposed changes We have purchased a portion of this water right for use in our cheese factory, & wish to move the right to our property for the new use.

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

1.

Right Number	Priority	Amount (cfs/ac-ft)	Nature of Use	Period of Use
36-07337E	11-25-1977	0.66 cfs	~~Commercial~~	Jan 1 to Dec 31
		99.0 AFA	Commercial	to
				to
				to

2. Total amount of water being transferred 0.66 cubic feet per second and/or 99.0 acre-feet per annum.

3. Source of water Ground Water tributary to _____

4. Point(s) of Diversion:

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

5. Lands irrigated or place of use:

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

MICROFILMED

Total acres _____

 Transfer No. 54C1

PART 1

6. General Information:

a. Description of diversion system 2 Wells & pump (main well & backup well), mainlines to plant

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

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

d. Remarks:
Water will be used for equipment washing (processing equipment), cheese washing during production, and restrooms. Process generates more wastewater than what is brought into the plant. Property is Lot 1 Blk 2 in Jerome South Industrial Park.

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

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

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

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

MICROFILMED

PART 2

A. DESCRIPTION OF RIGHT AS RECORDED:

Water Right No. **36-07337C**

STAGE: **DECREED**

BENEFICIAL USE	PERIOD OF USE	DIVERSION RATE	ANNUAL VOLUME
IRRIGATION	04/01 to 10/31	3.18 CFS	636.0 AF

SOURCE

GROUNDWATER

Priority: 11/25/1977

LOCATION OF POINT(S) OF DIVERSION: SWNESW , Sec. 5, Township 08S, Range 14E
NWNWSE , Sec. 5, Township 08S, Range 14E
GOODING County

PLACE OF USE: IRRIGATION

TWN	RGE	SEC		ACRES		ACRES		ACRES	TOTAL
08S	14E	5	NESW	9	NWSW	1	SESW	16	
			NESE	33	NWSE	33	SWSE	34	
			SESE	33					159
					Total number of acres irrigated:				159

CONDITIONS/REMARKS:

1. A MEASURING DEVICE AND LOCKABLE CONTROLLING WORKS OF A TYPE ACCEPTABLE TO IDWR SHALL BE PERMANENTLY INSTALLED AND MAINTAINED AS A PART OF THE DIVERTING WORKS.

MICROFILMED

TRANS NO. 5401

PART 2

A. DESCRIPTION OF RIGHT AS RECORDED:

Water Right No. **X36-07337C**

STAGE: **LICENSE**

BENEFICIAL USE	PERIOD OF USE	DIVERSION RATE	ANNUAL VOLUME
IRRIGATION	04/01 to 10/31	3.18 CFS	636.0 AF

SOURCE

GROUNDWATER

Priority: 11/25/1977

LOCATION OF POINT(S) OF DIVERSION: SWNESW , Sec. 5, Township 08S, Range 14E
NWNWSE , Sec. 5, Township 08S, Range 14E
GOODING County

PLACE OF USE: IRRIGATION

TWN	RGE	SEC		ACRES		ACRES		ACRES	TOTAL
08S	14E	5	NESW	9	NWSW	1	SESW	16	
			NESE	33	NWSE	33	SWSE	34	
			SESE	33					159
					Total number of acres irrigated:				159

CONDITIONS/REMARKS:

1. A MEASURING DEVICE AND LOCKABLE CONTROLLING WORKS OF A TYPE ACCEPTABLE TO IDWR SHALL BE PERMANENTLY INSTALLED AND MAINTAINED AS A PART OF THE DIVERTING WORKS.

MICROFILMED

PART 2

Transfer No. 5401

10. To your knowledge, has any portion of this water right undergone a period of five or more consecutive years of non-use?
No If yes, describe _____

B. DESCRIPTION OF PORTION OF RIGHT BEING TRANSFERRED

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

1. amount 0.66 cfs (cfs/ac-ft) for Irrig. purposes from 4-1 to 10-31
amount 99 ~~NNN~~.0 AFA (cfs/ac-ft) for _____ purposes from _____ to _____
amount _____ (cfs/ac-ft) for _____ purposes from _____ to _____

2. Point(s) of Diversion: Same as 2.A.1.

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

3. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	
8S	14E	5															33		33

Total acres 33

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

1. amount 2.52 cfs (cfs/ac-ft) for Irrig. purposes from 4-1 to 10-31
amount 504.0 AFA (cfs/ac-ft) for _____ purposes from _____ to _____
amount _____ (cfs/ac-ft) for _____ purposes from _____ to _____

2. Point(s) of Diversion: Same as 2.A.1.

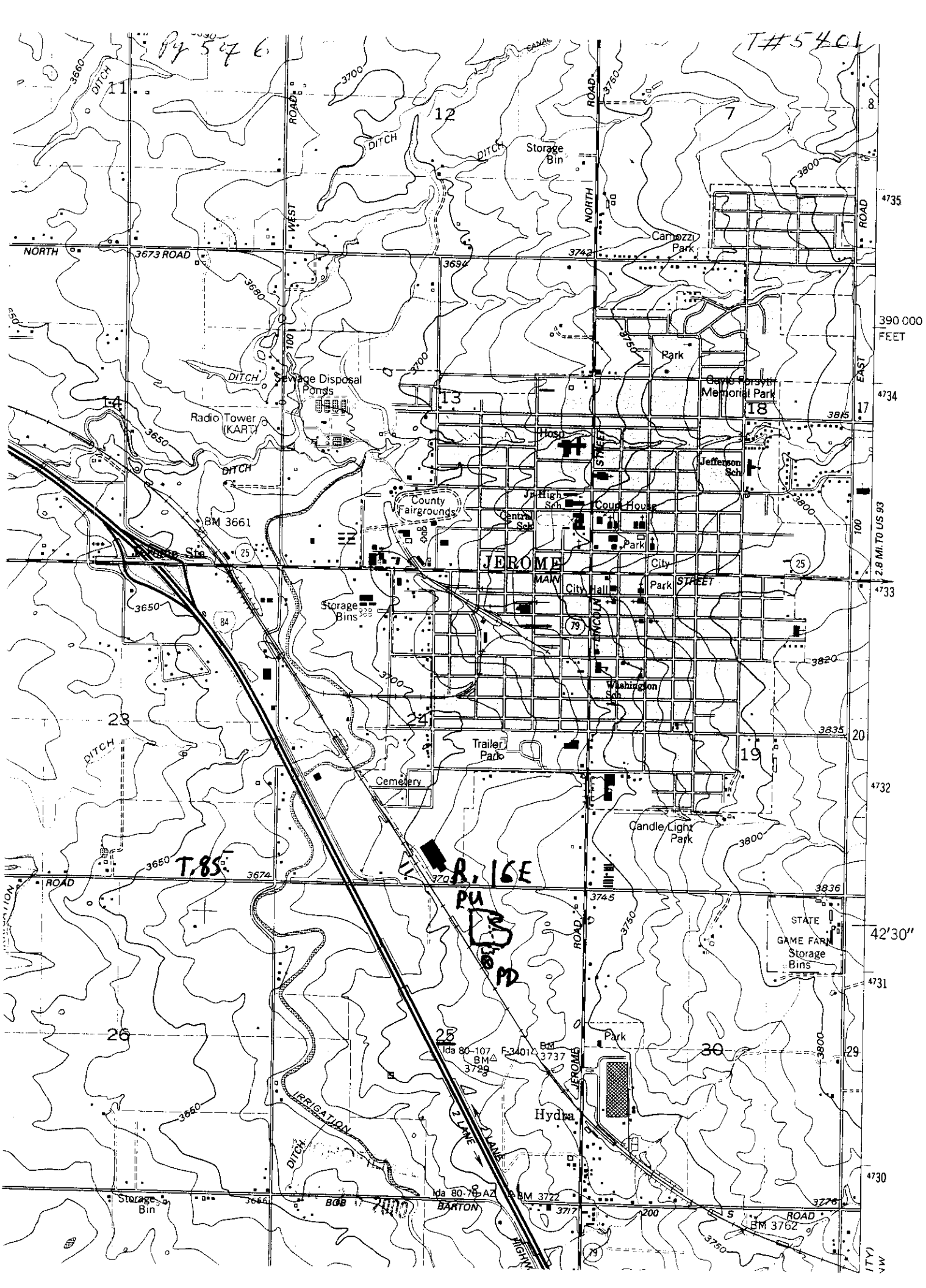
Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion

3. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	
8S	14E	5									9	1	5	16	33	33	1	33	126

MICROFILMED
JUL 25 2000

Total acres 126


T#5401
T.8S.
R.16E
PU
PD
JEROME
Hydra
Storage Bin
Carnozzi Park
Sewage Disposal Ponds
Radio Tower (KART)
County Fairgrounds
Jr High Sch
Court House
Central Sch
Park
City Hall
Jefferson Sch
Gayle Forsyth Memorial Park
Storage Bins
Trailer Park
Cemetery
Candle Light Park
Washington Sch
STATE GAME FARM Storage Bins
BM 3661
BM 3737
BM 3722
BM 3762
Ida 80-107 BM 3729
F-3401
Ida 80-78 AZ
Storage Bin
NORTH 3673 ROAD
WEST ROAD
NORTH ROAD
EAST ROAD
MAIN STREET
LINCOLN
JEROME
BARTON
IRRIGATION DITCH
DITCH
CANAL
2 LANE
HIGHWAY
2.8 MI. TO US 93
390 000 FEET
42'30"

PART 3

B. CHANGES IN NATURE OF USE

1 New Nature of Use	Amount (cfs/ac-ft)	Hours/days/year	Period of Use
Commercial	0.66 cfs	as needed	1-1 to 12-31
	99.0 AFA		to

2. Quantity and quality of return flows and location of discharge:
About 275,000 gallons per day of potable water (state certified) goes into the NSCC canal near the plant. About the same amount goes to the Jerome treatment plant.

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

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

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

JRP Mining Debora Chase Maintenance Manager
(Signature of Applicant)

Subscribed and sworn to before me this 23rd day of December, 19 98.

J F Stanton
(Notary Public)

My commission expires 10-25-2000

FOR DEPARTMENT USE ONLY

Transfer contains 6 pages and 6 attachments

Received by JF Stanton Date 12-23-98 Protest filed by

Prelim. check by JH Fee $100. 5021688

Receipted by JP Date 12-23-98

Published in Gooding Co. Leader + Northside News Copies of protest forwarded by

Pub. dates 3/11 & 3/18/99 Hearing held by Date

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

rec'd. by

Copy of transfer sent to lien holder

MICROFILM

DEC 29 1998

RECEIVED

DEC 29 1998

Department of Water Resources
Western Region

177862

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

D. JOHN THORNTON & ASSOCIATES, P.A.
1101 WEST RIVER STREET, SUITE 340
POST OFFICE BOX 7156
BOISE, ID 83707-1156
208/344-8600

STATE OF IDAHO COUNTY OF GOODING
Filed for record at the request of D. John Thornton
18 min. past 9 o'clock A m. this 9th
of November, 1998 900
By Penny Archibald Deputy

(SPACE ABOVE LINE FOR RECORDER'S USE)

BARGAIN AND SALE DEED

* * * * * *

W. A. SANDY and FLORENCE M. SANDY, husband and wife, Grantors, for good and valuable consideration, the receipt of which is hereby acknowledged, do hereby grant, bargain, sell, and convey to MOUNTAIN AND VALLEY PROPERTIES L. P., an Idaho limited partnership, Grantee, whose address is 3104 South 1200 East, Hagerman, Idaho 83332, all of their right, title and interest as tenants in common, in and to that certain parcel of real property located in Gooding County, Idaho, as more particularly described on Exhibit A attached hereto and made a part hereof by this reference.

TOGETHER WITH all improvements, easements, hereditaments and appurtenances thereto, and subject to such rights, easements, covenants, restrictions and zoning regulations as appear of record or based upon the premises.

IN WITNESS WHEREOF, Grantors have hereunto subscribed their names to this instrument effective the sixth day of November, 1998.

GRANTORS:

W. A. Sandy
W. A. SANDY

Florence M. Sandy
FLORENCE M. SANDY

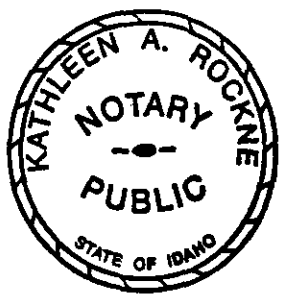
MICROFILM
NOV 25 1998

T#5401

STATE OF IDAHO)
ss.
COUNTY OF ADA)

On this sixth day of November, 1998, before me, the undersigned Notary Public in and for said State, personally appeared W. A. SANDY and FLORENCE M. SANDY, husband and wife, known or identified to me to be the persons whose names are subscribed to the foregoing instrument and acknowledged to me that they 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, State of Idaho
Residing at: Boise, Idaho
Commission expires: 2/7/2000

EXHIBIT A

* * * * * *

Township 8 South, Range 14 East of the Boise Meridian, Gooding County, Idaho.

Section 5: A parcel of land located in the Southwest Quarter, more particularly described as follows;

COMMENCING at the Northeast corner of said Southwest Quarter;
Thence South 00°47'49" West 21.98 feet to the REAL POINT OF BEGINNING;
Thence South 00°33'55" West 1293.76 feet to the Southeast corner of the Northeast Quarter of the Southwest Quarter;
Thence along the Easterly boundary of said Southwest Quarter South 00°34'09" West 400.0 feet;
Thence South 89°49'57" West 500.0 feet;
Thence North 00°34'09" East 400.0 feet;
Thence North 43°56'01" East 603.6 feet;
Thence North 50°00'00" West 350.0 feet;
Thence North 57°44'13" East 150.0 feet;
Thence North 10°30'50" East 455.43 feet;
Thence North 54°42'58" East 186.40 feet to the REAL POINT OF BEGINNING.

ALSO:

Township 8 South, Range 14 East of the Boise Meridian, Gooding County, Idaho.

Section 5: All of the Northwest Quarter of the Southeast Quarter;
All of the Northeast Quarter of the Southeast Quarter;
All of the East One-Half of the Southeast Quarter of the Southeast Quarter:

SUBJECT to a 20 foot wide power line easement affecting the Northerly and Southerly boundary of said East One-Half of the Southeast Quarter and affecting the Northerly boundary of the Southeast Quarter of the Southeast Quarter of the Southeast Quarter.

177861

STATE OF IDAHO COUNTY OF GOODING

Filed for record at the request of D. John Thornton

17 min. past 9 o'clock A m. this 9th

of November, 19 98. 9.00

By Penny Archibald Deputy

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

D. JOHN THORNTON & ASSOCIATES, P.A.
1101 WEST RIVER STREET, SUITE 340
POST OFFICE BOX 7156
BOISE, ID 83707-1156
208/344-8600

(SPACE ABOVE LINE FOR RECORDER'S USE)

BARGAIN AND SALE DEED

* * * * * *

JOHN A. SANDY, a married man, dealing with his sole and separate property, Grantor, for good and valuable consideration, the receipt of which is hereby acknowledged, does hereby grant, bargain, sell, and convey to W. A. SANDY and FLORENCE M. SANDY, husband and wife, Grantees, whose current address is 240 E. Bruneau Street, Hagerman, Idaho 83332, all of his right, title and interest in and to that certain real property located in Gooding County, Idaho, more particularly described on Exhibit A attached hereto and made a part hereof by this reference.

TOGETHER WITH all improvements, easements, hereditaments and appurtenances thereto, and subject to such rights, easements, covenants, restrictions and zoning regulations as appear of record or based upon the premises.

IN WITNESS WHEREOF, Grantor has hereunto subscribed his name to this instrument this sixth day of November, 1998.

GRANTOR:

John A. Sandy

JOHN A. SANDY

MICROFILMED

JAN 26 2000

T # 5401

STATE OF IDAHO)
ss.
COUNTY OF ADA)

On this sixth day of November, 1998, before me, the undersigned Notary Public in and for said State, personally appeared JOHN A. SANDY, known or identified to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he 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.

MARC BANNER NOTARY PUBLIC STATE OF IDAHO

NOTARY PUBLIC, State of Idaho
Residing at: Boise ID
Commission expires: 8/24/00

Micro
Feb 25 2009

EXHIBIT A

* * * * * *

Township 8 South, Range 14 East of the Boise Meridian, Gooding County, Idaho.

Section 5: A parcel of land located in the Southwest Quarter, more particularly described as follows;

COMMENCING at the Northeast corner of said Southwest Quarter;
Thence South 00°47'49" West 21.98 feet to the REAL POINT OF BEGINNING;
Thence South 00°33'55" West 1293.76 feet to the Southeast corner of the Northeast Quarter of the Southwest Quarter;
Thence along the Easterly boundary of said Southwest Quarter South 00°34'09" West 400.0 feet;
Thence South 89°49'57" West 500.0 feet;
Thence North 00°34'09" East 400.0 feet;
Thence North 43°56'01" East 603.6 feet;
Thence North 50°00'00" West 350.0 feet;
Thence North 57°44'13" East 150.0 feet;
Thence North 10°30'50" East 455.43 feet;
Thence North 54°42'58" East 186.40 feet to the REAL POINT OF BEGINNING.

ALSO:

Township 8 South, Range 14 East of the Boise Meridian, Gooding County, Idaho.

Section 5: All of the Northwest Quarter of the Southeast Quarter;
All of the Northeast Quarter of the Southeast Quarter;
All of the East One-Half of the Southeast Quarter of the Southeast Quarter:

SUBJECT to a 20 foot wide power line easement affecting the Northerly and Southerly boundary of said East One-Half of the Southeast Quarter and affecting the Northerly boundary of the Southeast Quarter of the Southeast Quarter of the Southeast Quarter.

MIOUC

JUL 13 2020

MEMORANDUM OF AGREEMENT

DUPLICATE

THIS AGREEMENT Made and entered into this 16th day of December, 1998, by and between JOHN A. SANDY, Hagerman, Idaho (hereinafter "Vendor") and DAVISCO FOODS, INC., dba Jerome Cheese Company, P.O. Box 485, Jerome, Idaho (hereinafter "Vendee").

WITNESSETH:

WHEREAS, Vendor is the owner of a license, or permit, for approximately 150 inches of ground water, which ground water is appurtenant to Vendor's property located in Township 8 South, Range 14 E.B.M., Section 5, Gooding County, Idaho; and,

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

WHEREAS, Vendor desires to sell to Vendee, and Vendee desires to purchase from Vendor, 33 inches of the above described water for the sum of Eight hundred dollars ($800.00) per inch, for a total amount of Twenty six thousand four hundred dollars ($26,400.00).

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

1. In consideration of the sum of $26,400.00, Vendor sells and Vendee purchases 33 inches of ground water.

2. The agreed purchase price of $26,400.00 shall be payable in cash.

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

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

5. Vendee acknowledges that it has ascertained, from sources other than Vendor, the applicable zoning and other regulatory ordinances regarding the use of the 33 inches of water and Vendor has made no representations with respect thereto.

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

In the event this water cannot be transferred within 120

T# 5401

DUPLICATE

days, this agreement shall be void and the money returned to Vendee. It being understood that the money shall be deposited in the Hobdey & Hobdey Trust Account, which is a non-interest bearing account. In the event the parties wish to extend this agreement beyond the 120 days hereof, they shall so indicate in writing. However, each party agrees to be responsible for paying one-half (1/2) the costs of attorney fees for the preparation of this agreement.

Vendee specifically acknowledges and agrees that Craig D. Hobdey is not representing it and Vendee is advised to seek legal counsel of its own choosing.

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

John A. Sandy

SS# 519-56-8495

3104 S. 1200 E.
Hagerman, Idaho 83332

"VENDOR"

DAVISCO FOOD, INC.
dba Jerome Cheese Company

BY: _____

Print Name

Title: _____

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

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

November 19, 1999

Senator John Sandy
3104 S. 1200 E
Hagerman, ID 83332

RE: TRANSFER NO. 5401 - JEROME CHEESE COMPANY

Dear Senator Sandy:

At the request of Norman C. Young of this office, please find enclosed a copy of the transfer document issued by the department for Transfer 5401 in the name of Jerome Cheese Company.

Also please be aware that the Preliminary Order in this matter approving the transfer became final on November 2, 1999, since none of the parties to the matter filed a petition for reconsideration, exceptions or briefs in connection with the Preliminary Order.

If you have questions, please feel free to contact me.

Sincerely,

L. GLEN SAXTON, P.E.
Chief, Water Allocation Bureau

Encl: 1

c: Norman C. Young

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JUL 2 5 2000

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

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

November 18, 1999

JEROME CHEESE CO
PO BOX 485
JEROME ID 83338

RE: Transfer 5401

Dear Water Right Holder(s):

Enclosed please find a copy of the transfer document for Transfer 5401 in the name of Jerome Cheese Company.

Also please be aware that the Preliminary Order issued in this matter approving the transfer has become final, since no party filed a Petition for Reconsideration, Exceptions or Briefs in connection with the Preliminary Order.

If you have any questions regarding this matter, you may call our office at 208-327-7900.

Sincerely,

Jeff Peppersack, Manager
Water Right Permits Section

JP:klt

Enclosure

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JUL 26 2000

RECEIVED
NOV 15 1999
Department of Water Resources

GIVENS PURSLEY LLP

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Kenneth L. Pursley
Virginia L. Stukel
Conley Ward
Stephanie C. Westermeier
Robert B. White

Raymond D. Givens
James A. McClure
OF COUNSEL

Via Facsimile and U.S. Mail

November 12, 1999

Mr. L. Glen Saxton
Idaho Department of Water Resources
1301 N. Orchard
Statehouse Mail
Boise, ID 83720-9000

Phillip J. Rassier, Esq.
Idaho Department of Water Resources
1301 N. Orchard St.
Statehouse Mail
Boise, ID 83720-9000

Re: Jerome Cheese Company — Sandy Water Right
IDWR Transfer No. 5401
Our File No. 5472-1

Dear Messrs. Saxton and Rassier:

This follows up on my conversation with Mr. Saxton earlier this morning, when I called to inquire about the effective date of the order issued in this matter.

As I read the Department's rules (and the APA), the preliminary order in this matter became final on November 2, 1999—21 days after its issuance on October 12, 1999. I believe we are in agreement on that.

My concern is with the Department's practice of waiting until the 28 day period for judicial review expires before treating the rule as final. Since that 28 day clock does not begin to run until the rule becomes final (November 2, 1999), that would push us out until November 30, 1999.

I do not believe that it is necessary or appropriate for the Department to wait for the 28 day period for judicial review to expire. Under the Department's rules, the preliminary order is final on November 2, 1999. The order is effective on the day that it

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becomes final.[1] Nowhere do the rules require the Department to "wait and see" if anyone appeals.

This conclusion is reinforced by the provision in the Department's rules which allows any party to seek a stay of the rule. IDAPA 37.01.01.780. In this case, none has chosen to do so. Consequently, there is no basis on which to treat the rule as ineffective.

This conclusion is further reinforced by the fact that the Department's rules specifically provide that the order is not automatically stayed even if someone does appeal. IDAPA 7-01.01.740.c ("The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal). In other words, the order remains effective pending appeal, unless and until a court at some time in the future were to affirmatively choose to stay the effectiveness of the order by issuing an injunction. Consequently, there is no reason to hold up the effectiveness of the order while we wait and see if someone files an appeal.

In conclusion, I believe that Jerome Cheese Company is entitled to have the Department treat the October 12, 1999 preliminary order as final and effective for all purposes as of November 2, 1999.

I very much appreciate the time you have devoted to this issue, and look forward to hearing your thoughts on this. It is always a pleasure to work with both of you.

---

[1]The APA, Idaho Code § 67-5246, does provide an additional 14 day period before a final order becomes effective in some cases. But this applies only to orders issued by an agency head. Section 67-5246(5) refers to "the order" which apparently relates back to "any final order issued by the agency head" in the previous subsection. Thus, this statutory provision is simply a mechanism to ensure that the parties have an opportunity to file a petition for reconsideration of orders issued by an agency head before the order goes into effect. It has no applicability to preliminary orders which become final automatically because no administrative appeal is filed; they become "effective" as soon as they become final—because there is no further mechanism for administrative review and no reason to delay their effectiveness.

MICROFILMED
JUL 26 2000

Sincerely,

Christopher H. Meyer

Encl: Copy of my outline of the Department's rules

cc: Jon Davis
Rex Minchey
Chuck Brockway

CHM:baf
S:\Clients\5472\6\Corr\1999-11-12 CHM Ltr to G.Saxton & P.Rassier - Re effective date of order.wpd

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JUL 26 2000

Post-Hearing Time Line for Contested Case before IDWR

ACTION	ACTOR	DEADLINE	AUTHORITY
Hearing.	**Conducted by hearing officer, with participation by all parties.**	**Date set by hearing officer.**	**Idaho Code § 67-5242; IDAPA 37.01.01.550.**
Recommended or preliminary order.[1]	**Issued by hearing officer.**	**No deadline. Hearing officer apparently may take as long as needed following the conclusion of the hearing.**	**Idaho Code § 67-5243(1)(a); IDAPA 37.01.01.720.01; IDAPA 37.01.01.730.01.**
Petition for reconsideration of recommended or preliminary order (optional).[2]	**Filed by any party. Directed to hearing officer.**	**14 days from order.**	**Idaho Code § 67-5243(3); IDAPA 37.01.01.720.02.a; IDAPA 37.01.01.730.02.a.**
Order "disposing of" motion for reconsideration.[3]	**Issued by hearing officer.**	**21 days from petition (or else deemed denied).**	**Idaho Code § 67-5243(3); IDAPA 37.01.01.720.02.a; IDAPA 37.01.01.730.02.a.**

[1] Note that the APA and the implementing rule contemplate use of both "recommended orders" and "preliminary orders." The difference is that preliminary orders become final automatically after a certain amount of time (if there is no petition or appeal), while recommended orders require the agency head's approval before becoming final orders.

[2] Filing a petition for reconsideration at this stage affords the Hearing Officer an opportunity to correct the alleged error before the matter is elevated to the agency head. Note that there is a separate provision for a "petition for clarification," IDAPA 37.01.01.770. This serves a similar, but less formal function. Most importantly, a petition for clarification does not suspend the time for appeal.

[3] The hearing officer is required to "dispose of" the petition within 21 days. Neither the statute nor the rule way what this means. It could mean that the hearing officer is required to address the merits of the petition within that time. But the Department does not read the rule that way. According to the Department, granting the petition simply means that the hearing officer has agreed to reconsider his or her decision. It does not indicate one way or the other whether the order will be changed in accordance with the request of the petitioner. Moreover, according to the Department, granting the petition essentially "stops the clock.." Because the APA and the Department's implementing rule do not say what happens next, the Department takes the view that the hearing officer can take as long as he or she needs to reconsider the matter. Presumably, the end result is a new recommended order or preliminary order, which sends the parties back to step one. But this is not spelled out in the statute or rule. Thus, there is risk of substantial delay in filing a petition for reconsideration.

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ACTION	ACTOR	DEADLINE	AUTHORITY
A preliminary order becomes "final" automatically if no appeal to the agency head or petition for reconsideration is filed.	(automatic)	21 days from order (if no petition for reconsideration or appeal to agency head is filed).[4]	Idaho Code § 67-5245(3); Idaho Code § 67-5246(3); IDAPA 37.01.01.730.02.b.
A recommended order goes to the agency head if no appeal to the agency head or petition for reconsideration is filed.	(automatic)	21 days from order, if no petition for reconsideration or appeal to agency head is filed. Neither the APA nor the Department fix any deadline for the agency head to issue a final rule.	Idaho Code § 67-5244. IDAPA 37.01.01.720.2.b.
Appeal to agency head from either preliminary or recommended order. Sometimes known as filing "exceptions". Opening brief is filed simultaneously.	Any party may file. Directed to agency head.	21 days from order, or from denial of petition for reconsideration.	Idaho Code § 67-5244(1); Idaho Code § 67-5245(3); IDAPA 37.01.01.720.02.b; IDAPA 37.01.01.730.02.b.
Opposing briefs.	Filed by opposing parties. Directed to agency head.	21 days from opening briefs.	Idaho Code § 67-5244(1); Idaho Code § 67-5245(5); IDAPA 37.01.01.720.02.c; IDAPA 37.01.01.730.02.c.
Oral argument (optional).	Agency head and all parties	No deadline.	Idaho Code § 67-5244(1); Idaho Code § 67-5245(5); IDAPA 37.01.01.720.02.c; IDAPA 37.01.01.730.03.d
Final order (or remand for further evidentiary hearings).	Issued by agency head.	56 days (after briefs, or oral argument if there is one). The agency may take longer, for good cause.	Idaho Code § 67-5244(2)(a); Idaho Code § 67-5245(6)(a); IDAPA 37.01.01.720.02.c; IDAPA 37.01.01.730.02.d.
Motion for reconsideration of final order by agency head.[5]	Any party may file. Directed to agency head.	14 days from final order issued by agency head.	Idaho Code § 67-5246(4); IDAPA 37.01.01.740.02.a

[4] Note: The APA provides only 14 days for an appeal to the agency head, but the statute allows the agency to provide a different deadline. The Department has set the deadline at 21 days.

[5] Note that a petition for reconsideration may be filed at this stage only if the final order was issued by the agency head. If a preliminary order has become final automatically (because there was no appeal or petition), then no further administrative review is available.

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ACTION	ACTOR	DEADLINE	AUTHORITY
Order disposing of motion for reconsideration.	**Issued by agency head.**	**21 days from petition (or else deemed denied).**	**Idaho Code § 67-5246(4); IDAPA 37.01.01.740.02.a**
Final order becomes "effective." Applies only to orders issued by agency head (not to preliminary orders which become final automatically).[6]	**(automatic)**	**14 days after issuance of the order, if no petition for reconsideration. If a petition for reconsideration is filed with respect to a final order by an agency head, the final order becomes effective once the petition is disposed of.**	**Idaho Code § 67-5246; IDAPA 37.01.01.740.c; IDAPA 37.01.01.780.**
Petition for judicial review to district court.	**Filed by any aggrieved party in District Court.**	**28 days from final order (that is, 28 days from order issued by the agency head or from date when preliminary order became automatically final).**	**Idaho Code § 67-5273(2); IDAPA 37.01.01.740.02.c**
Cross-petition for judicial review.	**Filed by opposing parties in District Court**	**14 days from petition for judicial review.**	**Idaho Code § 67-5273(2)**

[6] The statute refers to "the order" which apparently relates back to "any final order issued by the agency head" in the previous subsection. Thus, this statutory provision is simply a mechanism to ensure that the parties have an opportunity to file a petition for reconsideration of orders issued by an agency head before the order goes into effect. It has no applicability to preliminary orders which become final automatically because no administrative appeal is filed; they become "effective" as soon as they become final—because there is no further mechanism for administrative review. Note also that the Department's rules provide that the effectiveness of any order shall not be stayed automatically on the filing of an appeal.

GIVENS PURSLEY LLP

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Conley Ward
Stephanie C. Westermeier
Robert B. White

Raymond D. Givens
James A. McClure
OF COUNSEL

Via Hand Delivery
October 26, 1999

Mr. L. Glen Saxton
Idaho Department of Water Resources
1301 N. Orchard
Statehouse Mail
Boise, ID 83720-9000

RECEIVED
OCT 26 1999
Department of Water Resources

Re: Jerome Cheese; Transfer No. 5401
Our File No. 5472-1

Dear Mr. Saxton:

I am writing with respect to the Preliminary Order issued on October 12, 1999. This Preliminary Order approved the transfer of a portion of Water Right No. 36-07337C, subject to nine conditions and two remarks.

I am writing to seek clarification with respect to Condition Number 5, which states:

> 5. Prior to use of water under this approval, the right holder shall provide assurance to the Department of how and when the 33 acres in the SWSE Section 5, T8S, R14E, B.M. are dried up. The right holder is not authorized to divert water under this approval if the 33 acres are being irrigated.

My only concern is with the second sentence of this condition. The Applicant and the vendor of the water right both understand that once the portion of the water right is transferred to the Applicant, the vendor may not continue to use the water. Indeed, a "dry up" provision is contained in the sale agreement. So far as we understand, the dry up is likely to be permanent.

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However, it is possible that at some time in the future the vendor or his successor could acquire another water right and begin to irrigate the land again. So long as the new water right were properly obtained through appropriation or transfer, I cannot see any legal reason why the land could not be irrigated again.

I believe that this can be clarified satisfactorily through the documentation which we will be providing pursuant to the first sentence of Condition No. 5. In other words, we will describe to the Department the details of the "dry up" provision, and specifically call out the fact that the vendor (or his successor) has the right to acquire another water right in the future in order to bring the land back under irrigation.

I trust that this is fully consistent with your intent in drafting Condition No. 5, and that the Department did not intend to prohibit the vendor from ever obtaining another water right for the dried-up parcel.

If this is correct, you need take no further action. As I mentioned, we will clarify this in our filing under Condition No. 5.

If this is not correct, please so advise, and treat this letter as a Petition for Reconsideration of the Preliminary Order.

Sincerely,

Christopher H. Meyer

cc: Charles E. Brockway, Ph.D., P.E., Brockway Engineering, P.L.L.C.
William K. Chisholm, Protestant
Michael C. Creamer, Esq., Givens Pursley LLP
Jon Davis, Jerome Cheese Company
Mark Davis, Davisco Foods, Inc.
Lee J. Halper, Protestant
Paul K. Hunter, P.G., EnviroSearch International
Scott McClure, P.E., McClure Engineering
Allen D. Merritt, P.E., Idaho Department of Water Resources
J. Rex Minchey, Jerome Cheese Company
John A. Sandy, Vendor
Robert E. Williams, Esq., Fredericksen, Williams & Meservy

CHM:baf
S:\Clients\5472\1\Corr\1999-10-26 CHM Ltr to G.Saxton - Re Sandy clarification.wpd

MICROFILMED
JUL 25 2000

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

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

October 12, 1999

RE: In the matter of Application for transfer No. 5401 in the name of Jerome Cheese Company

Dear Interested Parties:

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

PETITION FOR RECONSIDERATION

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

EXCEPTIONS AND BRIEFS

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

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

ORAL ARGUMENT

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

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

CERTIFICATE OF SERVICE

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

FINAL ORDER

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

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

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

APPEAL OF FINAL ORDER TO DISTRICT COURT

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

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

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JUL 26 2000

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

Sincerely,

L. Glen Saxton

L. GLEN SAXTON, Chief
Water Allocation Bureau

Enclosure

c: IDWR Region
City of Jerome

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JUL 26 2000

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Department of Water Resources

GIVENS PURSLEY LLP

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Virginia L. Stukel
Conley Ward
Stephanie C. Westermeier
Robert B. White
Raymond D. Givens
James A. McClure
OF COUNSEL

September 2, 1999

Michael J. Oths, Esq.
Bar Counsel
Idaho State Bar
525 W. Jefferson St.
P.O. Box 895
Boise, ID 83701-0895

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

Dear Mr. Oths:

I am writing in response to Mr. Lee Halper's letter of August 23, 1999 addressed to the Idaho State Bar Association. In his letter, Mr. Halper suggested that I may have engaged in "barratry."

Barratry is defined in Black's as "frequently exciting or stirring up quarrels and suits." In light of the fact that Mr. Halper initiated the referenced administrative litigation (as well as other costly suits throughout the Magic Valley), and in light of the fact that the letter of which he complains was aimed at settling the protest he filed, it is not readily apparent to me how my action might fall under the heading of barratry.

If there is anything further you need from me, please do not hesitate to ask.

Sincerely,

Christopher H. Meyer

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OCT 25 2000

Encl: Copies of Mr. Halper's correspondence

cc: Lee Halper
Client
Hearing Officer
Parties

CHM:baf
S:\Clients\5472\1\Corr\1999-09-02 CHM Ltr to M.Oths - Re Halper complaint.wpd

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RECEIVED
AUG 24 1999
Givens Pursley, LLP

HALPER--SMITH COMPANY
SILVERWARE & JEWELRY STORAGE
DESIGNERS~MAKERS
331 SOUTH 230 WEST
JEROME, IDAHO 83338
208-324-2240
208-324-4422 {FAX}
SLVRCHST@MAGICLINK.COM

August 23, 1999

Christopher Meyer
Givens Pursley
PO Box 2720
Boise, Idaho 83701

Dear Chris,

I am in receipt of your letter to me and the other parties involved in Transfers Nos. 5401 and 5436 dated August 6, 1999.

I am forwarding this and other letters of barratry to the State Bar Association for their review and action. Responses to your several accusations of extortion are still being considered. Have a nice day.

Sincerely,

Lee Halper

MICRO
AUG 25 2000

HALPER--SMITH COMPANY
SILVERWARE & JEWELRY STORAGE
DESIGNERS~MAKERS
331 SOUTH 230 WEST
JEROME, IDAHO 83338
208-324-2240
208-324-4422 {FAX}
SLVRCHST@MAGICLINK.COM

AUGUST 23, 1999

IDAHO STATE BAR ASSOCIATION
PO BOX 895
BOISE, IDAHO 83701

DEAR SIRS,

ENCLOSED COPIES OF TWO LETTERS AND MEMORANDUM ISSUED BY GIVENS PURSLEY IN A MATTER OF WATER TRANSFER PROTEST. I AM NOT AN ATTORNEY BUT I WOULD SUBMIT THAT THE HIGHLIGHTED AREAS COULD BE CONSIDERED BARRATRY. I WOULD APPRECIATE YOUR OPINION ON THIS AND TO BE KEPT APPRISED OF ANY CORRESPONDENCE OR ACTIONS YOU ISSUE IN THIS MATTER. THANK YOU.

SINCERELY,

LEE HALPER

AUG 26 1999

ORIGINAL

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AUG 3 1 1999
Department of Water Resources

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

BEFORE THE
IDAHO DEPARTMENT OF WATER RESOURCES

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

Jerome Cheese,
Applicant

William K. Chisholm,
Lee J. Halper,
Protestants

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

Jerome Cheese,
Applicant

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

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

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

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

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

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

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

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

AUG 25 1999

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

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

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

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

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

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

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

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

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

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

Dated this 31th day of August, 1999.

GIVENS PURSLEY LLP

By _____
Christopher H. Meyer

Attorneys for Applicant
Jerome Cheese Company

AUG 31 1999

CERTIFICATE OF SERVICE

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

Patrick D. Brown, Esq.
Parker, Warr & Brown
812 Shoshone Street East
Twin Falls, ID 83301
☑US Mail ☐Email ☐Fax ☐Hand ☐Overnight

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

Original filed with:
Mr. Karl J. Dreher
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Mr. Lee J. Halper
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Christopher H. Meyer

RECEIVED
AUG 16 1999
Department of Water Resources

RECEIVED
AUG 13 1999
Department of Water Resources
Southern Region

BEFORE THE IDAHO STATE DEPARTMENT OF WATER RESOURCES

In Re	Transfer Nos. 5401 and 5436
Application for Transfer of Jerome Cheese Company	**STATEMENT OF PUBLIC WITNESS, THE CITY OF JEROME, AN IDAHO MUNICIPAL CORPORATION**

STATE OF IDAHO)
) ss.:
County of Jerome)

MARJORIE SCHMIDT, being first duly sworn, deposes and says as follows:

1. I am a duly elected and serving Councilperson for the City of Jerome.

2. Jerome Cheese Company (hereinafter "JCCO") presently owns a parcel of real property approximately 18 acres in size located immediately adjacent to the city limits of Jerome. A legal description of the real property is attached hereto as Exhibit "A." The property is presently improved by a large, sophisticated cheese manufacturing operation.

3. JCCO's property, although not currently annexed to the City, is bounded on its north, south and east sides by the city limits of Jerome. Unincorporated area bounds JCCO's property on the west side. The real property described on Exhibit "A" is the real property upon which new wells are proposed to be located, subject to the pending transfer application.

4. JCCO began cheese making operations at its present location in the year 1992. From that date to the present, JCCO has been connected to and received the benefit of the culinary water system and the public wastewater treatment system owned by the City of Jerome.

5. For the most recently completed fiscal year, the City of Jerome received approximately $900,000 in total user fees for wastewater treatment. Approximately $450,000, or one-half of the total, were fees paid by JCCO.

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6. For the most recently completed fiscal year, approximately $450,000 in revenues were received from users of the City's culinary water system. Approximately $67,000 or 14.88%, were revenues paid by JCCO.

7. Before JCCO came online with the Jerome Wastewater Treatment System in 1992, the City of Jerome passed a revenue bond to raise funds to allow an expansion of the Jerome Wastewater Treatment Plant to a capacity sufficient to service the needs of wastewater treatment for JCCO. The original bond issue was for $1,500,000 of which $1,453,622.50 will remain owing after the payment of $163,313.75 on 11-1-99. The amortization schedule for the payment of these bonds is attached hereto as Exhibit "B."

The City has also spent considerable sums in installing improvements to increase the ability to process the effluent being generated by JCCO. In the fall of 1998, the City spent approximately $30,000 to install a new pump at the H Street Lift Station to change the capacity from 450 gallons per minute to 600 gallons per minute in order to meet JCCO's expansion needs. This expansion was primarily for the benefit of JCCO and JCCO did not participate in the cost.

8. The City of Jerome has proposed an ordinance involuntarily annexing JCCO's property to the City. That annexation ordinance is opposed by JCCO. The City believes annexation to be appropriate given JCCO's property being contiguous to three boundaries of the City of Jerome, and its present reception of significant City services. The annexation of JCCO's real property would generate significant additional property tax revenue to the City. The City has the desire and the capacity to continue to provide both public water and wastewater treatment services to JCCO.

9. JCCO has recently announced to the City that it intends to sever not only culinary water services from the City, but also public wastewater treatment services. This intention was announced in a draft complaint sent by JCCO to the City, a copy of which is attached hereto as Exhibit "C." The City is concerned that this transfer, if granted, will be used by JCCO as a basis to avoid annexation, as announced in the draft complaint.

10. The City is presently a party to a wastewater treatment agreement with JCCO. A copy of that agreement is attached to this Statement as Exhibit "D." The Agreement expires

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December 31, 1999. No negotiations are underway for the extension of this Agreement. The City is concerned as to the disposition of wastewater generated by JCCO if negotiations for continuation of wastewater treatment services to JCCO are not commenced or fail. It is my understanding that the wastewater from JCCO contains pollutants that require thorough treatment. The manner in which this wastewater is treated is of great concern to the City, particularly with JCCO located on the City's doorstep. The City has not been provided any information from JCCO as to alternate means of disposal of its wastewater if the Agreement with the City of Jerome is not renewed. The City has received no information that JCCO has applied for an NPDES or other permit, or taken any other steps to find an alternative wastewater treatment for its effluent. The agreement of the City of Jerome to extend the current contract for wastewater treatment services cannot be assured.

I am advised that in the final order of the Department in the matter of Transfer Nos. 4722 and 4723, dated September 15, 1997, the director of the Department denied an application for transfer of water proposed for a new dairy operation northeast of Gooding, Idaho. The applicant had not applied to Gooding County for a "CAFO" permit required to operate the proposed dairy. The Director, at page 9 of his Order, in paragraphs 10 and 11, stated that:

> "10. The applicant met its initial burden of coming forward with evidence relative to local public interest for the Section 10 Dairy. The applicant did not adequately show how it planned to operate the proposed dairy and waste system or meet the zoning ordinances of Gooding County. The applicant's response that it had not yet applied to Gooding County for a CAFO is not sufficient reason to be unable to describe with reasonable detail how it planned to operate the dairy and appurtenant facilities to cmoply with county ordinances.
>
> 11. Based on the evaluation criteria described in IDAPA 37.03.08045.01.e (Water Appropriation Rule 45.01.e), the applicant did not meet its ultimate burden of persuasion relative to local public interest for the Section 10 Dairy."

A copy of the Order is attached hereto as Exhibit "E."

JCCO has not provided any information as to how it intends to dispose of its wastewater beyond the existence of its current contract with the City.

11. According to JCCO, under some circumstances JCCO would continue to use water from the City of Jerome, even if the current transfer applications were granted. These

circumstances would be the use of the water as a standby in case JCCO's own wells fail; the use of the City's water and well water in combination; the contemplated new wells do not find water; or for other emergency purposes. The City of Jerome is concerned that its ambiguous role may not in fact be able to be served given the current pressure on the expansion of commercial and industrial projects in the City of Jerome which require water and wastewater treatment services. The City of Jerome believes that it is unreasonable to expect the City to provide these alternate functions without any understanding as to the exact scope of these services or compensation for them.

12. The City of Jerome has issued to JCCO, in connection with the wastewater treatment agreement, a permit for the discharge of effluent to the wastewater treatment plant. A copy of that permit is attached hereto as Exhibit "F." JCCO has announced in its materials in support of its application for transfer, an expansion which would generate additional use of the Jerome Wastewater Treatment Plant from its current level of approximately 350,000 gallons of effluent per day to at least 425,000 gallons per day. The City, pursuant to the terms of the existing wastewater treatment agreement and NPDES permit, is considering, and may be required to, lower the permit volume amount to a maximum 350,000 gallons per day. This is necessary because of JCCO's announcement that it intends to sever its use of the Jerome Wastewater Treatment Plant, the fact that JCCO has not historically exceeded an annual discharge of 350,000 gallons per day to the wastewater treatment plant, and rapidly expanding business and industry within the City of Jerome, which will require the excess capacity of the wastewater treatment plant. The City of Jerome, by policy, and by law, must first address the needs of individuals and businesses within the corporate limits of the City of Jerome. With present commitments, the City of Jerome's wastewater treatment plant cannot handle the proposed 425,000 gallons per day discharge stated by JCCO. The needs of individuals and businesses outside the City of Jerome are secondary.

13. Idaho Code §42-203A(5) defines the term "public interest" as: "...the affairs of the people in the area directly affected by the proposed use." The public interest as applied to the affairs of the citizens of the City of Jerome, Idaho, will be adversely affected by the granting of the transfer application for all of the above reasons.

14. Granting the present transfer without conditions would open the door to substantial expansion and use of water by JCCO. For example, if JCCO is allowed to transfer the amount of water proposed and still uses water under the City's water rights, as is presently the case, an expansion of JCCO's facility could occur without any analysis or provision made for the proper treatment of additional effluent. Approving the transfers as proposed would not only provide for this type of expansion, but would evade consideration of this impact on the local public interest. Questions such as: Where would the effluent be treated?, How will it be treated?, Will it be treated?, Are discharge permits available and obtainable?, and How will the affairs of the local people be impacted? should be answered. JCCO has not indicated how or if it may satisfy these concerns.

15. A list of the water rights which the City of Jerome presently owns is attached hereto as Exhibit "G."

16. The present transfer application is not in the public interest because:

a. It will assist JCCO in its desire to avoid annexation by the City of Jerome;

b. The City will suffer a significant revenue loss;

c. The use of additional water by JCCO will generate effluent levels which will exceed the present capacity of the City's wastewater treatment plant;

d. JCCO has shown no ability to comply with permitting agencies who regulate the discharge of its effluent beyond December 31, 1999, or in volumes in excess of its current discharge.

FURTHER Affiant sayeth naught.

Marjorie Schmidt
MARJORIE SCHMIDT

SUBSCRIBED and SWORN to before me this 13th day of August, 1999.

L. Marie Fletcher
NOTARY PUBLIC for Idaho
Residing at: Jerome
Commission Expiration: 12-30-99

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AUG 26 2000

CERTIFICATE OF SERVICE

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

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

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

Bill Chisolm
19073 East Highway 30
Buhl, ID 83316

Patrick D. Brown
Attorney at Law
109 South Adams
Jerome, Idaho 83338

Lee Halper
321 South 230 West
Jerome, ID 83338

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

Robert E. Williams
Fredericksen, Williams & Meservy
P. O. Box 168
Jerome, Idaho 83338

DATED: 8-13-99

Marjorie Schmidt
MARJORIE SCHMIDT

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FEB 25 2000

EXHIBIT "A"

TOWNSHIP 8 SOUTH, RANGE 16, EAST OF THE BOISE MERIDIAN, JEROME COUNTY, IDAHO

Section 25: Part of the NE1/4, described as follows:

Commencing at the North quarter corner of Section 25. Said point lies North 89°16'00" West, 2640.06 feet from the Northeast corner of Section 25;
THENCE South 89°16'00" East, 26.98 feet along the North boundary of Section 25, to a point on the Easterly Right-of-Way of the Union Pacific Railroad;
THENCE South 33°42'43" East, 48.50 feet along said Right of Way to THE REAL POINT OF BEGINNING;
THENCE South 89°16'00" East, 1045.64 feet, along a line parallel with and 40.00 feet South of the North boundary of Section 25;
THENCE along a curve right central angle 89°32'56"; Radius 30.00 feet; Arc 46.89 feet; Long Chord 42.26 feet; Tangent 29.76 feet; Long Chord Bearing South 44°29'32" East;
THENCE South 00°16'56" West, 525.57 feet;
THENCE along a curve left central angle 34°00'31"; Radius 330.00 feet; Arc 195.88 feet; Long Chord 193.01 feet; Tangent 100.92 feet; Long Chord Bearing South 16°43'20" East;
THENCE South 33°43'35" East, 142.07 feet, to a point on the Northerly boundary of "Jerome South Industrial Park Subdivision Phase I";
THENCE South 56°16'25" West, 520.00 feet along the boundary of said subdivision to a point on the Easterly Right-of-Way of the Union Pacific Railroad;
THENCE North 33°42'43" West, 1395.48 feet along the Railroad Right-of-Way to THE REAL POINT OF BEGINNING.

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EXHIBIT
A

BOND AMORTIZATION SCHEDULE
CITY OF JEROME
SEWER REVENUE BONDS, SERIES 1978 AND SERIES 1997
WITH SUPPLEMENTAL COUPONS

PAYMENT DATE	SERIES 1978 PRINCIPAL	SERIES 1978 INTEREST	SERIES 1997 SUPP. COUPONS	SERIES 1997 PRINCIPAL	SERIES 1997 INTEREST	TOTAL	TOTAL BY FISCAL YEAR
01-Sep-97	$50,000.00	$3,000.00				$53,000.00	$53,000.00
01-Nov-97			$30,000.00		$42,739.11	$72,739.11	
01-Mar-98		$1,500.00				$1,500.00	
01-May-98					$34,040.00	$34,040.00	
01-Sep-98	$50,000.00	$1,500.00				$51,500.00	$159,779.11
01-Nov-98			$90,000.00	$35,000.00	$34,040.00	$159,040.00	
01-May-99					$33,313.75	$33,313.75	$192,353.75
01-Nov-99				$130,000.00	$33,313.75	$163,313.75	
01-May-00					$30,421.25	$30,421.25	$193,735.00
01-Nov-00				$135,000.00	$30,421.25	$165,421.25	
01-May-01					$27,248.75	$27,248.75	$192,670.00
01-Nov-01				$140,000.00	$27,248.75	$167,248.75	
01-May-02					$23,818.75	$23,818.75	$191,067.50
01-Nov-02				$145,000.00	$23,818.75	$168,818.75	
01-May-03					$20,157.50	$20,157.50	$188,976.25
01-Nov-03				$160,000.00	$20,157.50	$180,157.50	
01-May-04					$16,037.50	$16,037.50	$196,195.00
01-Nov-04				$160,000.00	$16,037.50	$176,037.50	
01-May-05					$11,837.50	$11,837.50	$187,875.00
01-Nov-05				$170,000.00	$11,837.50	$181,837.50	
01-May-06					$7,290.00	$7,290.00	$189,127.50
01-Nov-06				$270,000.00	$7,290.00	$277,290.00	$277,290.00
TOTAL	$100,000.00	$6,000.00	$120,000.00	$1,345,000.00	$451,069.11	$2,022,069.11	$2,022,069.11

MOORE

MAR 2 5 2008

EXHIBIT B

Christopher H. Meyer
Gary G. Allen
GIVENS PURSLEY, LLP
277 North Sixth Street, Suite 200
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Boise, Idaho 83701-2720
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Facsimile: 208-388-1300
Christopher H. Meyer Idaho State Bar ID# 4461
Gary G. Allen Idaho State Bar ID# 4366
S:\Clients\5472\2\Pleadings\complaint.wpd

Attorneys for Plaintiff

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

JEROME CHEESE COMPANY, a Minnesota corporation, Plaintiff, v. CITY OF JEROME, an Idaho municipal corporation, Defendant.	Case No. _____ COMPLAINT FOR DECLARATORY RELIEF

COMES NOW JEROME CHEESE COMPANY, by and through its attorneys of record, Givens Pursley LLP, who for a cause of action against Defendants complains and alleges as follows:

1. Plaintiff Jerome Cheese Company ("Jerome Cheese") is a Minnesota corporation qualified to do business in Idaho.

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EXHIBIT C

2. Defendant City of Jerome (the "City") is an Idaho municipal corporation.

3. Jerome Cheese operates a cheese processing plant (the "Plant") in Jerome County, Idaho, in the vicinity of the City.

4. On or about July 20, 1999, the City adopted Ordinance No. 877 (Bill No. 350) (the "Ordinance") purporting to annex Jerome Cheese into the City. A true and correct copy of the Ordinance is attached as Exhibit "A".

First Error: Property Not Divided Into Five Acre or Smaller Parcels

5. Idaho Code Section 50-222 requires, as a condition precedent to annexation, that the property be "laid off into blocks containing not more than five (5) acres of land each, whether the same shall have been or shall be laid off, subdivided or platted in accordance with any statute of this state or otherwise, or whenever the owner or proprietor or any person by or with his authority, has sold or begun to sell off such contiguous or adjacent lands by metes and bounds in tracts not exceeding five (5) acres.

6. The Plant is on a parcel of land of approximately 17 acres, which has never been subdivided by plat or other means into smaller tracts of land.

7. The land on which the Plant sits was once part of a larger parcel or larger parcels of land (the "Original Tract"). No part of the original tract has ever been divided into a tract or tracts of five acres or less.

Second Error: Annexation Not Reasonable

8. When Jerome Cheese was contemplating construction of the plant near Jerome, Jerome Cheese originally entered a purchase agreement to purchase property

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several miles from the City, particularly because Jerome Cheese was concerned about the possibility of annexation and the attendant costs.

9. Jerome Cheese was induced to move the Plant closer to the City into an industrial park. Jerome Cheese was assured that the Plant would not be annexed into the City.

10. Jerome Cheese would not have moved the Plant to its current location had it believed that annexation was a possibility.

11. Jerome Cheese constructed the Plant in approximately 1993.

12. As set forth in the following paragraphs, Jerome Cheese places no burden on City services that would justify annexation.

13. Jerome Cheese does not receive fire protection from the City.

14. Jerome Cheese does not receive police protection from the City.

15. Jerome Cheese is in the process of removing itself from both City water and sewer service.

FIRST CAUSE OF ACTION

DECLARATORY RELIEF

16. Plaintiff realleges and incorporates by this reference the allegations of paragraphs 1 through 15 above.

17. Plaintiff contends that the Ordinance is void and illegal because, without limitation, 1) it attempts to annex property, no part of which has ever been divided into parcels of five acres or less, and 2) the annexation is unreasonable in that, without

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limitation, Jerome Cheese does not receive fire or police protection from the City and is in the process of removing itself from City water and sewer service. Jerome Cheese therefore does not impose any burden on City services that would justify annexation. Plaintiff is informed and believes and thereon alleges that the City contends in all respect to the contrary.

18. An actual controversy existing therefore, Plaintiff requests a declaration that the Ordinance is null and void in all respects.

PRAYER

WHEREFORE, Plaintiff requests the following relief:

A. For an order declaring the Ordinance to be null and void and of no legal effect.

B. For attorneys' fees and costs pursuant to Idaho Code section 12-117, 12-120, 12-123 and other applicable authority.

C. For such other relief as the Court determines is just and proper.

DATED this _____ day of _____, 1999.

Respectfully submitted,

GIVENS PURSLEY LLP

By _____
Christopher H. Meyer
Gary G. Allen
Attorneys for Plaintiff Jerome Cheese Company

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FEB 2000

EXHIBIT A

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JUL 2 6 2006

INDUSTRIAL USER AGREEMENT

THIS AGREEMENT, is made and entered into this 3rd day of April, 1998, by and between JEROME CHEESE COMPANY, a Minnesota corporation, qualified to do business in Idaho, hereinafter referred to as "Industry", and the CITY OF JEROME, State of Idaho, a municipal corporation of the State of Idaho, hereinafter referred to as "City"

RECITALS

A. Industry owns a plant and related facilities for the manufacturing of cheese, which plant and foundation are adjacent to the City.

B. Industry is connected to the water and wastewater systems owned by City.

C. Industry produces substantial quantities of effluent that are discharged to the City's wastewater treatment system.

D. The City possesses a permit allowing treated wastewater from its wastewater treatment facility to be discharged to waters of the United States of America.

E. City's wastewater treatment facility is capable of removing settleable and suspended solids and reducing biochemical oxygen demand from wastewater effluent produced by Industry.

F. Industry has connected to the wastewater treatment facilities of the City and desires to continue to enjoy the benefits thereof, including the operation and maintenance services provided by the City, and,

G. The parties wish to agree upon terms and conditions whereby City will continue to accept certain volumes of wastewater effluent produced by Industry, and Industry will pay to City reasonable fees for the services thus provided.

IT IS THEREFORE AGREED, in consideration of these recitals and the mutual promises and covenants hereafter contained, as follows:

1. Prior Agreement: This agreement replaces the Industrial User Agreement regarding wastewater treatment entered into between the parties on the 5th day of May, 1992, extended by letter agreement to a term ending December 31, 1997.

2. Term: The term of this agreement shall be for a period commencing January 1, 1998, and ending at Midnight (12 a.m.) December 31, 1999. The initial term of the agreement may be extended by written agreement executed by both parties.

3. Volume of Effluent; Manner of Discharge; Compliance with Existing Ordinances:

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EXHIBIT
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(a) Industry shall comply with every applicable provision of Chapters 13.04, 13.08, 13.12, 13.16, 13.20 and 13.36 of the Jerome Municipal Code as they now exist or as they may be amended hereafter. Any conflicts between this agreement and the applicable provisions of the Jerome Municipal Code shall be controlled by this agreement.

(b) Industry shall abide by every term and condition of the Industrial Waste Discharge Permit issued to it by the City on September 15, 1995, a copy of which is attached hereto as Exhibit "A" and which is incorporated by reference into this agreement. Any default by Industry under the permit shall be considered a default under this agreement.

4. Fees: Industry shall be charged an all inclusive monthly fee for sewer service which includes charges for flow and wastewater strength. The fee shall be determined by the total of the following component charges:

(a) Flow - a fee of $.729 per 1000 gallons of flow.

(b) Biological Oxygen Demand (BOD):

0 - 6000 lbs/day	$0.25 per pound
6000 - 7500 lbs/day	$0.27 per pound
7500 - above lbs/day	$0.33 per pound

(c) Total Suspended Solids (TSS) - $.235/lb.

For every hour in which the pH of the effluent discharged by Industry to the wastewater treatment system does not fall within the range of 6.0 - 9.0: (1) Industry shall pay, in addition to all other fees due under this agreement, a surcharge of $10.00 per hour for every hour or portion of hour that the pH falls between 5.0 and 6.0 or between 9.0 and 10.0, provided that Industry shall be granted a 15 minute grace period per occurrence. (2) If the pH is less than 5 or more than 10 the surcharge shall be increased to $100.00 per hour or portion of hour per pH unit under 5 or over 10, until the pH returns to within the permitted range. There is a maximum of 15 minutes grace period for pH discharges under 5 or over 10 before the surcharges required by this paragraph shall be assessed.

Industry shall self-monitor and report pH conditions to the city's wastewater treatment operator on a daily basis. Industry shall report to the City Clerk's Office all pH excursions, duration, and strength on a monthly basis. This report shall be accompanied by payment in full for all pH surcharges due the city. Industry shall maintain a chart record which shall chart pH range 24 hours per day, 7 days per week. Copies of all charts shall be provided the City on a daily basis.

"Industry shock load" to the wastewater treatment system for purposes of this agreement is defined as a short term effluent discharge with sufficiently high

concentration to cause a draw down in the Dissolved Oxygen content of the aeration basin to below 1 part per million, caused by Jerome Cheese Co. Industry shall pay the City the difference in increased electrical demand for the month caused by short term shock loadings to the City's wastewater treatment plant. Increased electrical demand shall be calculated by applying the previous demand charge and the shock load demand charges to the remaining components of the electrical rate structure.

Failure to notify the City's wastewater treatment system operator of a known discharge within 8 hours of when the Industry knew of, or reasonably should have known of a discharge, that is in excess of established chemical, organic, or solids loading parameters shall be considered failure to notify. The Industry shall at the discretion of the Council of the City, pay a surcharge of $1,500.00 per occurrence in addition to all other fees due under this agreement.

In the event that Industry ceases operations for a thirty-day period, then Industry shall pay a minimum payment of one month's principal and interest payment on the revenue bond the City issued to finance the construction of the wastewater treatment plant expansion, for each month that the plant is not operating, less any wastewater service revenue received from other businesses in the Jerome Industrial Park establishing service subsequent to the execution of this agreement. An amortization schedule of the revenue bond is attached hereby as Exhibit "B". At the time the City's debt for the revenue bond is fully paid, the minimum fee structure for plant non-operation shall be renegotiated.

Should the Industry discharge effluent that exceeds the standards set forth in paragraph 4 above, Industry shall pay to City additional costs as set forth in paragraph 7 below. Industry shall be billed on a monthly basis for user fees which bills shall be due and payable within thirty (30) days of the date of billing. In the event that BOD levels go under the minimum amount required to meet principal and interest on the City's existing revenue bond, an amortization schedule for which is attached hereto as Exhibit "B", for two consecutive months, then the parties shall renegotiate the fees set forth in this paragraph to cover such costs.

Industry reserves the right to construct their own Wastewater Pretreatment Facility. If Industry chooses to build their own pretreatment facility the parties shall renegotiate the Industry's fee schedule ninety (90) days prior to the start up of the new facility. If the parties cannot negotiate the new fees, the new fee shall be determined by binding arbitration pursuant to I.C. § 7-901 et seq. An arbitrator shall be selected by the parties. If the parties cannot agree on an arbitrator, the arbitrator shall be selected by the District Judge of the Fifth Judicial District Court sitting in Jerome County, Idaho. The arbitrator shall promulgate rules of arbitration which shall be designed to conduct an expedient, efficient arbitration determining the reasonable fees to be assessed Industry under this agreement in light of the pretreatment by the Industry of its effluent.

5. Renegotiation of Fees; Third Party Review of Rates: The fees set forth in paragraph 4 above shall be renegotiated annually ninety (90) days prior to the

anniversary date of this agreement. Fees shall be based on actual or projected discharges and costs. If no agreement is reached, the City may increase the fee unilaterally to no more than 5% over the previous year's fee. The parties may, if they mutually agree in writing, submit existing rates under this agreement to a qualified third party for review.

6. Monitoring Flow: Industry agrees to provide suitable facilities to the City for sampling its discharge into the wastewater treatment system of the City. Metering equipment shall be operational prior to any discharge to the City. The City will monitor the flow every day for volume during the term of this agreement. Monitoring for content will occur every other day or more frequently if necessary and will include, but not be limited to, the flow into the City's system, the biochemical oxygen demand of the effluent, suspended solids within the effluent, and other chemical composition thereof. Biochemical oxygen demand shall be determined by the City on the basis of its samples. Industry shall from time to time take split samples to have tested at a state certified lab at Industry's expense to verify the sampling taken by City. Should discrepancies of greater than ten percent (10%) be noted, City and Industry shall reserve the right to engage a third independent certified laboratory who would serve as an arbitrator. The City will keep an accurate record of its sampling and testing activities, which records shall be available to Industry upon reasonable notice. The City shall be responsible for the daily and scheduled maintenance and repair of the metering station with the exception of flow and pH meter calibrations. Industry shall provide copies of quarterly or more frequently scheduled flow meter calibration to the City. The City at its own expense may have the flow meter calibration checked and confirmed.

7. Fines and Penalties; Indemnification and Hold Harmless: Should the Industry be in default under this agreement, then Industry shall be responsible for:

(a) Any fines and penalties imposed on the City by the Environmental Protection Agency of the United States government, or the Department of Health and Welfare, Division of Environmental Quality of the State of Idaho caused by Industry's discharges into the wastewater system of the City;

(b) All subsequent costs of the City incurred to return the wastewater treatment facility biological processes to normal operation in the event of a violation of existing permit standards or as they may hereafter be amended. Additionally, all costs, expenses or additional penalties which may be incurred by the City in negotiating or contesting the amount or imposition of any fines or penalties for which Industry may ultimately be responsible, and any other costs or expenses of any kind or nature which may be incurred by the City as a result of Industry's default.

(c) The City agrees to cooperate with Industry in negotiating the payment of any fines or penalties sought by the United States Environmental Protection Agency or other state or federal agencies

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asserting the final fine or penalty. The entire costs of such negotiations shall be that of the Industry.

(d) Industry agrees to promptly pay all fines and penalties when they have finally been determined by the administrative body.

8. Metering Equipment: Industry shall, at its sole expense, provide and maintain a metering station to the City for the installation of a meter to monitor the amount of the discharge into the City's wastewater treatment facility, including pH of the effluent. City shall have the right to make the sampling and metering station secure to its own satisfaction during monitoring activities.

9. Non Transferability: The parties hereto acknowledge and agree that neither will, without the express written consent of the other first having been obtained, assign, transfer, or convey this agreement to any third party. The City will not withhold its consent to any proposed transfer unreasonably.

10. Attorney Fees on Default: Should either party be in default of this agreement, the non-defaulting party shall be entitled to attorney fees and costs incurred in the pursuit of the default in addition to whatever other remedies that party may be entitled.

11. Integration: This agreement contains the entire agreement and understanding of the parties, and supersedes all prior negotiations, correspondence, understandings, and agreements whether written or verbal.

12. Binding effect: This agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties.

IN WITNESS WHEREOF, the parties hereto have hereunto subscribed their names, the day and year in this agreement first above written.

"THE CITY OF JEROME"

CITY OF JEROME, IDAHO

By: Dennis Moore
DENNIS MOORE, Mayor

ATTEST:

Kathy Miller
KATHY MILLER, City Clerk

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"JEROME CHEESE COMPANY"

PRESIDENT

SECRETARY

STATE OF IDAHO)
)ss.
County of Jerome)

On this 10th day of April, 1998, before me, the undersigned, a Notary Public in and for said County and State, personally appeared DENNIS MOORE and KATHY MILLER, the Mayor and City Clerk, respectively, of the CITY OF JEROME, IDAHO, known to me to be such officers of the Corporation whose name is subscribed to the within and foregoing instrument, and who acknowledged to me that they executed the same on behalf of said Corporation.

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

NOTARY PUBLIC for Idaho
Residing at Jerome, Idaho
Commission Expires: 5-23-01

STATE OF IDAHO)
)ss.
County of Jerome)

On this 3 day of April, 1998, before me, the undersigned, a Notary Public in and for said County and State, personally appeared Mark Davis and Jon Davis, the President and Secretary, respectively, of JEROME CHEESE COMPANY, known to me to be such officers of the Corporation whose name is subscribed to the within and foregoing instrument, and who acknowledged to me that they executed the same on behalf of said Corporation.

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

NOTARY PUBLIC for Idaho
Residing at Jerome, Idaho
Commission Expires: 3/13/2003

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BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR)
TRANSFER NOS. 4722 AND 4723 OF)
WATER RIGHT NO. 37-07575 IN THE) **FINAL ORDER**
NAME OF NORTH VALLEY MILK, INC.)
)

On July 21, 1997, the hearing officer for the Idaho Department of Water Resources (department) issued a Recommended Order in connection with the above captioned matter. None of the parties filed a petition for reconsideration, briefs or exceptions in connection with the Recommended Order. Based upon his understanding of the law and the facts in this matter, the Director makes the following Findings of Fact, Conclusions of Law and Final Order:

FINDINGS OF FACT

1. On October 24, 1989, the department issued water right License No. 37-07575 (the license) as follows:

Ident. No:	37-07575
Priority:	March 28, 1977
Source:	Groundwater
Rate of div:	2.21 cubic feet per second (cfs)
Max. ann. vol:	942.5 Acre Feet (AF) when combined with other rights for the same land.
Pt of div:	NW1/4SE1/4 Sec. 11, T5S, R15E, B.M., Gooding County
Use:	Irrigation
Season of use:	April 1 to November 1 each year
Place of use:	354 acres in parts of Sections 10, 11, 14, and 15, T5S, R15E, B.M. as follows:

Sec 10 - SE1/4SE1/4 (19 ac)
Sec 11 - NE1/4SW1/4 (38 ac)
SW1/4SW1/4 (34 ac)
SE1/4SW1/4 (38 ac)
NW1/4SE1/4 (32 ac)
SW1/4SE1/4 (38 ac)
Sec 14 - NW1/4NE1/4 (36 ac)
SW1/4NE1/4 (14 ac)
NE1/4NW1/4 (39 ac)
NW1/4NW1/4 (36 ac)
SW1/4NW1/4 (7 ac)
SE1/4NW1/4 (16 ac)
Sec 15 - NE1/4NE1/4 (7 ac)

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

EXHIBIT
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2. A department representative conducted the proof of beneficial use examination for the license on June 25, 1987 and was accompanied by Mitch Arkoosh who showed the irrigation system. The department issued the license on October 24, 1989. On September 2, 1988, the Arkooshes filed a Notice of Claim to a Water Right in the Snake River Basin Adjudication based on the license.

3. On April 19, 1995, North Valley Milk, Inc. (applicant) submitted Application for Transfer No. 4722 to the department. The application was subsequently amended on September 15, 1995 and on January 8, 1996. The amended application proposed two (2) changes to the license. One change involved the irrigation use. The other change involved a change in the nature of use of a part of the license from irrigation use to stockwater and commercial use. The stockwater and commercial uses are proposed in connection with a planned dairy in Section 10, T5S, R15E, B.M. (Section 10 Dairy) near the original place of use of the water right. The application shows the following:

Ident. No:	**37-07575A**
Priority:	March 28, 1977
Source:	Groundwater
Rate of div:	1.38 cfs
Annual vol:	276 AF
Pt of div:	SENWSE Sec. 11, T5S, R15E, B.M.
Use:	Irrigation
Season of use:	April 1 to November 1 each year
Place of use:	69 acres in NESW (35 ac), NWSW (3 ac) and NWSE (31 ac) Section 11, T5S, R15E, B.M.

Ident. No:	**37-07575B**
Priority:	March 28, 1977
Source:	Groundwater
Rate of div:	0.38 cfs
Annual vol:	105.5 AF
Pt of div:	NWNE Sec. 10, T5S, R15E, B.M. (2 points)
Use:	Stockwater and commercial
Season of use:	Year-round
Place of use:	Section 10, T5S, R15E, B.M.
Remarks:	1800 milking cows and 500 non-milking cows are planned for this dairy.

4. On May 3, 1995, the applicant also submitted Application for Transfer No. 4723 to the department proposing to change the nature of use of an additional part of the license from irrigation use to stockwater and commercial use to be used in an existing dairy near Wendell, Idaho (Wendell dairy). The application shows the following:

Ident. No:	**37-07575C**
Priority:	March 28, 1977
Source:	Groundwater
Rate of div:	0.15 cfs
Annual vol:	47.4 AF
Pt of div:	SWSWNW Sec. 29, T7S, R15E, B.M.
Use:	Stockwater and commercial

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Season of use: Year-round
Place of use: Section 29, T7S, R15E, B.M.

Comments: The commercial use sought under this application is water for an existing dairy with 800 milking cows and 200 non-milking cows.

5. The department published notice of the applications which were protested by John and Doris Robertson, Leslie Renner and Bonnie Arkoosh (Mrs. Michael Arkoosh).

6. On April 10, 1997 the department conducted a hearing in the matter and continued the hearing on April 30, 1997. The applicant was present and was represented by Robert Williams. Tom Arkoosh was present and represented protestant Bonnie Arkoosh (Arkoosh). Protestant Leslie Renner attended the hearing on April 10th but not on April 30th. Protestant Doris Robertson attended the hearing on April 30th but not on April 10th. Both Leslie Renner and Doris Robertson chose not to participate in the hearing as full parties but to retain all full party rights relative to notice and orders issued in the matter.

7. Issues identified by the protestants include the following:

a) The proposed changes will injure other water rights as follows:

- If the applicant changes the method of irrigating the E1/2NE Section 10 from flood irrigation to sprinkler irrigation, protestant Arkoosh would be injured, since Arkoosh would no longer benefit from waste water which has historically flowed south onto Arkoosh property.

b) The proposed changes will constitute an enlargement in use of the original right, since the water right has either been abandoned or forfeited.

c) The proposed changes conflict with the local public interest as described below:

- Through unauthorized discharges, the Section 10 Dairy waste disposal system may pollute Turkey Creek which is tributary to the Big Wood River. Turkey Creek is an intermittent stream located approximately 1/4 to 1/2 mile east of the Section 10 Dairy.

- Through unauthorized discharges, the Section 10 Dairy waste disposal system may flow or seep into the Robertson Ditch or Union Ditch, located approximately 1/4 to 1/2 mile south of the Section 10 Dairy site, ultimately adding contaminates to the Big Wood River.

- The Section 10 Dairy operation may contaminate groundwater and thereby adversely affect domestic wells in the area.

- The Section 10 Dairy operation will cause property values in the vicinity to decrease.

d) The applications are not consistent with the conservation of water resources within Idaho.

8. Exhibits offered and accepted as a part of the record include the following:

a. Applicant's Exhibit 1 - Local Water Budget Analysis and Regional Water Budget Analysis for a typical year.

b. Applicant's Exhibit 2 - Local Water Budget Analysis and Regional Water Budget Analysis for a drought year.

c. Applicant's Exhibit 3 - Printouts of diversions from annual reports of Water District No. 37 for years 1992 through 1996.

d. Applicant's Exhibit 4 - Stukenholtz Laboratory, Inc. - Soil Analysis Report.

e. Applicant's Exhibit 5 - NOT OFFERED.

f. Applicant's Exhibit 6 - NOT OFFERED.

g. Applicant's Exhibit 7 - Letter dated August 16, 1996 to Tom Arkoosh from Allen Merritt.

h. Applicant's Exhibit 8 - NOT OFFERED.

i. Applicant's Exhibit 9 - NOT OFFERED.

j. Applicant's Exhibit 10 - Report titled Hydrologic Evaluation of Proposed Transfers 4722 and 4723 for Water Right 37-07575 by Charles E. Brockway, November 26, 1996.

k. Applicant's Exhibit 11 - Gooding County Grandfather Confined Animal Feeding Operation (CAFO) Siting Permit granted to Arkoosh Produce Inc. dated April 3, 1996.

l. Applicant's Exhibit 12 - Water Right License No. 37-07575.

m. Applicant's Exhibit 13 - NOT OFFERED.

n. Applicant's Exhibit 14 - Deed from West One Bank to North Valley Milk, Inc. dated March 15, 1994.

o. Applicant's Exhibit 15 - Letter to Andy Fitzgerald from John and Leslie Renner.

p. Applicant's Exhibit 16 - NOT OFFERED.

q. Applicant's Exhibit 17 - Dairy Waste System Design prepared by Robert Ohlensehlen.

r. Applicant's Exhibit 18 - NOT OFFERED

s. Applicant's Exhibit 19 - Map of the general vicinity near the proposed Section 10 Dairy. [Note that the large map (2' x 3') was substituted on April 30, 1997 by counsel for the smaller version of the map which was entered as an exhibit on April 10, 1997].

t. Applicant's Exhibit 20 - Petition.

u. Applicant's Exhibit 21 - Local Water Budget Analysis and Regional Water Budget Analysis for a typical year and for a drought year - revised.

v. Protestant's Exhibit A - One (1) page from the Idaho Wellhead Protection Plan, February 1997, listing responsibilities of IDEQ.

w. Protestant's Exhibit B - One (1) page of Table E-1 from the Idaho Wellhead Protection Plan, February 1997.

x. Protestant's Exhibit C - One (1) page of Table 5-1 from the Idaho Wellhead Protection Plan, February 1997.

y. Protestant's Exhibit D - Table 10 - Daily production and composition of manure (feces and urine).

z. Protestant's Exhibit E - Excerpt of testimony from the Jacob Bosma hearing held on October 24, 1994 in connection with transfer No. 4387 of water right No. 37-08487B.

aa. Protestant's Exhibit F - Ordinance No. 62.

ab. Protestant's Exhibit G - NOT OFFERED.

ac. Protestant's Exhibit H - Letter dated May 6, 1993 to Arkoosh & Zidan, Inc. from Dan Noble, vice president of Idaho State Bank.

ad. Protestant's Exhibit I - Letter dated July 26, 1995 to North Valley Milk, Inc. from Conrad J. Aiken.

ae. Protestant's Exhibit J - Letter dated July 20, 1995 to Conrad Aiken from C. Tom Arkoosh.

af. Protestant's Exhibit K thru T - Photographs.

ag. Protestant's Exhibit U - Video tape.

ah. Protestant's Exhibit U-1 - Photograph made from Exhib. U.

ai. Protestant's Exhibit U-2 - Photograph made from Exhib. U.

aj. Protestant's Exhibit U-3 - Photograph made from Exhib. U.

ak. Protestant's Exhibit U-4 - Photograph made from Exhib. U.

al. Protestant's Exhibit U-5 - Photograph made from Exhib. U.

am. Protestant's Exhibit V - U.S. Geological Survey quadrangle maps showing the vicinity of the Section 10 Dairy.

an. Protestant's Exhibit W - Listing of concerns by protestant Doris Robertson.

ao. Protestant's Exhibit X - Soils map in the vicinity of the Section 10 Dairy.

ap. Protestant's Exhibit Y - Printout of soil types.

aq. Protestant's Exhibit Z - Printout of soil types.

(NOTE: Exhibit No. AA was not assigned to any exhibit).

ar. Protestant's Exhibit AB - NOT OFFERED.

as. Protestant's Exhibit AC - NOT OFFERED.

at. Protestant's Exhibit AD - NOT OFFERED.

au. Protestant's Exhibit AE - NOT OFFERED.

9. Most of the land shown as the place of use for the license has been irrigated using a combination of several different water rights including a natural flow right from the Big Wood River, shares of water from the Big Wood Canal Company, surface water delivered by American Falls Reservoir District No. 2, and groundwater under the license.

10. Water has been diverted from the well as a supplemental use under the license in 1977, 1978, 1979 and perhaps 1980 to provide part of the irrigation water supply for 354 acres during times when there was not a full supply of surface water. In 1995 and 1996, the applicant used the well to irrigate a portion of the licensed place of use.

11. The applicant proposes to change the license as described below:

a) To provide groundwater for the proposed Section 10 Dairy on a 56 acre site near the original place of use. The site is presently irrigated with surface water and is not a part of the licensed place of use;

b) To provide groundwater as the primary right to irrigate 69 acres in Section 11, T5S, R15E, B.M., most of which land has been irrigated with a combination of water rights including groundwater under the license, with surface water from the Big Wood River and with surface water delivered by American Falls Reservoir District No. 2. The applicant plans to discontinue the use of groundwater as a supplemental irrigation right for the remainder of the licensed 354 acre place of use; and

c) To authorize the present use at an existing dairy near Wendell. This dairy site occupies 20 acres of land which was formerly irrigated with surface water provided by the Northside Canal Company.

12. Analysis of the effect of the applications for transfer on water quantity related issues is relatively complex, since the applications involve changes to land which has been irrigated with both surface water and groundwater and since the applications propose significant changes of the land to be irrigated before and after the transfers.

13. The existing Wendell dairy consists of 800 milking cows and 200 dry cows. An existing well equipped with a 7.5 horsepower motor and pump provides water to the barn and watering troughs. The protestants did not provide any evidence or testimony opposing the transfer of water to this dairy.

14. The shares of canal company water which in the past have been used on the site of the Wendell dairy are now used on other existing irrigated acres (not new acres) adjacent to the dairy.

15. The applicant advised that until the water right authorization for a proposed dairy has been issued by the department, Gooding County will consider an application to them for a Confined Animal Feeding Operation (CAFO) siting permit to be incomplete. The applicant stated that it would be able to comply with the criteria of the Idaho Department of Agriculture and Division of Environmental Quality for the Section 10 Dairy but did not elaborate on how the compliance would be accomplished.

16. The applicant stated it planned to apply to Gooding County for needed approvals associated with the Section 10 Dairy but after being questioned by the protestant, the applicant did not elaborate on how it planned to meet the specific distance requirements of County Ordinance No. 62 including one which provides as follows:

> No CAFO shall be located within two thousand six hundred forty (2,640) feet of the rims of the Snake River Canyon and the Malad River Canyon and Zone "A" flood planes (sic) as set out on the Federal Emergency Management Agency's 1985 Flood Insurance Rate Map for Gooding County.

The applicant's proposed Section 10 Dairy operation including the lagoons, corrals, barn and pivot for land application of liquid dairy waste water is proposed within 2,640 feet of the Zone "A" flood plain. (See Applicant's Exhibit 19 and Protestant's Exhibit V).

17. The applicant has estimated the total consumptive use under the license and has compared that consumption with the estimated consumption if the transfers are approved.

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18. Protestant Arkoosh has filed Claim No. A37-04404A in the Snake River Basin Adjudication (SRBA) claiming the use of 0.56 cfs of wastewater for the irrigation of 56 acres in SENE and NESE Section 10, T5S, R15E, B.M. The priority of use claimed is June 1, 1940.

19. There are a number of existing CAFOs in the vicinity of the proposed Section 10 Dairy including a 1,000 head CAFO of protestant Arkoosh which presently is not operational and a 400 head CAFO of protestant John Renner. These locations are within 1/4 to 1/2 mile of the proposed Section 10 Dairy of the applicant.

20. Protestant Arkoosh stated that their CAFO contaminated their domestic well until they ceased the CAFO operation. The applicant did not refute the claimed contamination and did not offer any operating procedure or plan to minimize or eliminate potential contamination of either surface water or groundwater in the vicinity of the Section 10 Dairy.

21. Water years 1987, 1988, 1991, 1992 and 1994 were severe drought years in Idaho in which surface water supplies were far less than normal in many parts of Idaho.

22. The applicant does not plan to "dry up" acres irrigated under the license, but instead intends to change the source of water from groundwater to surface water for most of the land shown on the license.

CONCLUSIONS OF LAW

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

> The director of the department of water resources shall examine all the evidence and available information and shall approve the change in whole, or in part, or upon conditions, provided no other water rights are injured thereby, the change does not constitute an enlargement in use of the original right, and the change is consistent with the conservation of water resources within the state of Idaho and is in the local public interest as defined in section 42-203A(5), Idaho Code; ... .

2. IDAPA 37.03.08045.01.e.iii (Water Appropriation Rule 45.01.e.iii) provides in pertinent part as follows:

> e. Criteria for determining whether the project conflicts with the local public interest. The director will consider the following, along with any other factors he finds to be appropriate, in determining whether the project will conflict with the local public interest:
>
> iii. Compliance with applicable air, water and hazardous substance standards, and compliance with planning and zoning ordinances of local or state government jurisdictions. (Emphasis added).

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

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

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

6. The measure of a water right is the extent to which the right has been applied to a beneficial use. The applicant has estimated the extent of use which may have been made under the license based upon calculations and a number of assumptions, but has not determined or shown the extent of actual beneficial use of water under the license.

7. The nature of a supplemental water right is that the right is to be used during times when the primary water right(s) do not provide a full supply of water. If the supplemental right is not needed, it should not be diverted. Under this standard, a supplemental right normally should not be subject to forfeiture for non-use. Licensed water right No. 37-07575, however, has been so infrequently used (not used from 1981 through 1994) including five (5) of the most severe drought years in Idaho, that it is unlikely a significant portion of the right can now be used on a year-round basis without enlarging the water use.

8. The 69 acre tract for which the applicant seeks to change the supplemental groundwater right to a permanent right already has a full supply of water consisting of surface water and supplemental groundwater under the license. Any action of the applicant to change the supplemental right to a primary right by removing the surface water from the tract or other action will enlarge the extent of beneficial use authorized under the supplemental right.

9. Approval of the applications would constitute an enlargement in use of the water right, since all of the land originally irrigated would be irrigated after the transfers, plus a water supply would be provided for two (2) dairies.

10. The applicant met its initial burden of coming forward with evidence relative to local public interest for the Section 10 Dairy. The applicant did not adequately show how it planned to operate the proposed dairy and waste system or meet the zoning ordinances of Gooding County. The applicant's response that it had not yet applied to Gooding County for a CAFO is not sufficient reason to be unable to describe with reasonable detail how it planned to operate the dairy and appurtenant facilities to comply with county ordinances.

11. Based on the evaluation criteria described in IDAPA 37.03.08045.01.e (Water Appropriation Rule 45.01.e), the applicant

did not meet its ultimate burden of persuasion relative to local public interest for the Section 10 Dairy.

12. The applicant's proposal to change the method of irrigating the E1/2NE Section 10 from surface irrigation to sprinkler irrigation will reduce the amount of wastewater runoff from the land being irrigated. Such a change usually would not be considered to cause legal injury to protestant Arkoosh's right to use wastewater. The general nature of a wastewater right is that it may be used if available but cannot be demanded for the benefit of the wastewater user. The determination of contractual obligations, if any, however, is not within the department's jurisdiction.

13. The department should deny the applications for transfer.

ORDER

IT IS THEREFORE, hereby ORDERED that Application for Transfer Nos. 4722 and 4723 are **DENIED.**

Signed this 15th day of September, 1997.

KARL J. DREHER
Director

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 16th day of September, 1997, a true and correct copy of the foregoing **FINAL ORDER** was forwarded, by regular U.S. Mail, to the parties listed:

Andrew Fitzgerald
North Valley Milk Inc
425 N 250 W
Shoshone ID 83352

Robert E Williams III
FREDERICKSEN WILLIAMS
& MESERVY
PO Box 168
Jerome ID 83338

John and Doris Robertson
1326 S 2100 E
Gooding ID 83330

Bonnie Arkoosh
c/o C Thomas Arkoosh Esq
PO Box 32
116 Frourth Ave W
Gooding ID 83330

Leslie Renner
2254 E 1300 S
Gooding ID 83330

Julie L Yarbrough

JULIE L. YARBROUGH
Senior Secretary, Water Allocation Bureau

CITY OF JEROME, IDAHO

INDUSTRIAL WASTE DISCHARGE PERMIT

Issued To:

Jerome Cheese Co.

P.O. Box 485
47 West 100 South
Jerome, Idaho
83338

September 15, 1995

EXHIBIT
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PERMIT NO. J-1 Jerome Cheese Co.

ABSTRACT

In compliance with the provisions and conditions of the Ordinances of the City of Jerome and also with any applicable provisions of federal, State, or other local laws or regulations,

Jerome Cheese Co.
P.O. Box 485
47 West 100 South
Jerome, ID 83338

is authorized to discharge from activities classified by SIC No.(s) 2022 and 2023 from premises located at the above address to the City 's POTW collection system in accordance with effluent limitations, monitoring requirements, and conditions set forth in Parts I, II, III, IV, V, and VI hereof and any attachments.

This permit shall become effective on September 15, 1996 and authorization to discharge shall expire (no more than five years) from this date at midnight on September 15, 2001.

Signed this 15th day of September, 1996.

City Administrator an
Authorized Representative for the
City of Jerome, Idaho

PART I – EFFLUENT LIMITATIONS

Discharge occurs on the northern side of the property after passing through a flume. A flow dependant sampler is in place to take samples daily. The Discharge shall consist of the domestic, process, and cleanup wastewaters. Subject to the limitations set forth in this Permit, Jerome Cheese Co. is permitted to discharge the following quantities of wastewater and pollutants to the City's POTW collection system:

(1) The maximum daily total flow shall not exceed 0.458 MGD.

(2) The maximum flow shall not exceed 800 gallons per minute (GPM).

(3) The maximum daily BOD 5 discharge shall not exceed 7536 lb.

(4) The maximum daily TSS discharge shall not exceed 5886 lb.

(5) The maximum concentration of oil and grease discharged at any time shall not exceed 200 mg/L.

(6) The pH of the discharge at any time shall not be less than 6.0 nor greater that 9.0 standard pH units

TABLE 1

Pollutant	Daily Maximum	Sample Frequency	Sample Type
Flow	0.458 MGD 800 GPM	Continuous	Recorded Meter
pH	Greater than 6.0 and Less that 9.0	Continuous	Recorded Meter
TSS	5885 lb.	Daily	24 Hr. Composite
BOD5	7563 lb.	Daily	24 Hr. Composite
FOG	200 mg/L	2/Year	Grab

PERMIT NO. J1 Jerome Cheese Co.

PART I - EFFLUENT LIMITATIONS

SECTION A. INDUSTRY-SPECIFIC LIMITATIONS

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(2) The maximum hourly flow shall not exceed 800 gallons per minute(GPM).

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SECTION B. LOCAL DISCHARGE PROHIBITIONS AND LIMITATIONS

General Prohibitions: No user shall introduce or cause to be introduced into the POTW any pollutant or wastewater which causes pass through or interference. These general prohibitions apply to all users of the POTW whether or not they are subject to categorical pretreatment standards or any other National, State, or local pretreatment standards or requirements.

Specific Prohibitions: No user shall introduce or cause to be introduced into the POTW the following pollutants, substances, or wastewater:

(1) Any liquids, solids, or gases which by reason of their nature or quantity are or may be sufficient, either alone or by interaction with other substances, to cause a fire or explosive hazard in the POTW, including, but not limited to, any gasoline, benzene, naphtha, or fuel oil; and, in no case wastestreams with a closed-cup flash point of less than 140°F (60°C) using the test methods specified in 40 CFR §261.21, as amended; and, in no case pollutants which produce readings on an explosion meter, at the point of discharge into the POTW or at any point in the POTW, greater than five percent (5%) of the lower explosive limit of the meter for any two successive readings nor greater than ten percent (10%) of the lower explosive limit for the meter for any single reading;

(2) Wastewater having a pH less than 6.0 or more than 9.0, or having any other corrosive property capable of causing damage or hazards to the POTW structures, equipment, processes, or personnel:

(3) Grease, animal guts or tissues, paunch manure, bones, hair, hides or fleshings, entrails, whole blood, feathers, ashes, cinders, sand, spent lime, stone or marble dusts, metal, glass, straw, shavings, grass clippings, rags, spent grains, spent hops, waste paper, wood, plastics, gas, tar asphalt residues, residues from refining or processing of fuel or lubricating oil, mud, or glass grinding or polishing wastes; and, in no case any other solid or viscous substances in amounts which will cause obstruction of the flow in the POTW resulting in interference; and, in no case solid substances of such character or quantity that special and unusual attention is required for their handling;

(4) Pollutants, including oxygen-demanding pollutants (BOD, etc.), released in a discharge at a flow rate and/or pollutant concentration which, either singly or by interaction with other pollutants, will cause interference with the POTW;

(5) Wastewater having a temperature which will inhibit biological activity in the treatment plant resulting in interference, but in no case wastewater which causes the temperature at the introduction into the treatment plant to exceed 104°F (40°C) unless the Approval Authority, upon the request of the POTW, approves alternate temperature limits;

(6) Petroleum oil, non-biodegradable cutting oil, or products of mineral oil origin, in amounts that will cause interference or pass through;

(7) Pollutants which result in the presence of toxic gases, vapors, or fumes within the POTW in a quantity that may cause acute worker health and safety problems;

(8) Trucked or hauled pollutants, except at discharge points designated by the City;

(9) Noxious or malodorous liquids, gases, solids, or other wastewater which, either singly or by interaction with other wastes, are sufficient to create a public nuisance or hazard to life or to prevent entry into the sewers for maintenance or repair;

(10) Wastewater which imparts color which cannot be removed by the treatment process, such as, but not limited to, dye wastes and vegetable tanning solutions, which consequently imparts color to the treatment plant's effluent, thereby violating the City's NPDES permit. Color (in combination with turbidity) shall not cause the treatment plant effluent to reduce the depth of the compensation point for photosynthetic activity by more than ten percent (10%) from the seasonably established norm for aquatic life;

(11) Wastewater containing any radioactive wastes or isotopes except as specifically approved by the City Administrator in compliance with applicable State or Federal regulations;

(12) Storm water, surface water, ground water, artesian well water, roof runoff, subsurface drainage, swimming pool drainage, condensate, deionized water, non-contact cooling water, and unpolluted wastewater, unless specifically authorized by the City Administrator;

(13) Any sludges, screenings, or other residues from the pretreatment of industrial wastes or from industrial processes, unless specifically authorized by the City Administrator;

(14) Medical wastes;

(15) Wastewater causing, alone or in conjunction with other sources, the treatment plant's effluent to fail a toxicity test;

(16) Detergents, surface-active agents, or other substances which may cause excessive foaming in the POTW;

(17) Any substance which will cause the POTW to violate its NPDES and/or other disposal system permits;

(18) Any wastewater, which in the opinion of the City Administrator can cause harm either to the sewers, sewage treatment process, or equipment; have an adverse effect on the receiving stream; or can otherwise endanger life, limb, public property, or constitute a nuisance, unless allowed under special agreement by the City Administrator (except that no special waiver shall be given from categorical pretreatment standards);

(19) The contents of any tank or other vessel owned or used by any person in the business of collecting or pumping sewage, effluent, septic tank waste, or other wastewater unless said person has first obtained testing and approval as may be generally required by the City and paid all fees assessed for the privilege of said discharge;

(20) Any hazardous wastes as defined in rules published by the State of Idaho or in EPA rules 40 CFR Part 261;

(21) Persistent pesticides and/or pesticides regulated by the Federal Insecticide Fungicide Rodenticide Act (FIFRA).

Pollutants, substances, or wastewater prohibited by this section shall not be processed or stored in such a manner that they could be discharged to the POTW.

SECTION C. APPLICATION OF MOST STRINGENT LIMITATIONS

For a discharge regulated by Categorical Pretreatment Standards or other federal, State, or local discharge limitations or requirements, the most stringent limitations and requirements will apply.

SECTION D. SCHEDULE OF COMPLIANCE

The permittee shall achieve compliance with the effluent limitations and other requirements provided for in this permit in accordance with the Ordinance and the schedule of compliance in Attachment B.

PART II - INDUSTRY-SPECIFIC MONITORING AND REPORTING REQUIREMENTS

SECTION A. MONITORING LOCATION(S)

Jerome Cheese Co. shall provide a monitoring station including flow proportional sampler, flow monitoring device, and pH recorder at point of discharge for the purpose of ascertaining compliance with the provisions of this permit in accordance with the procedures provided for in the following sections. Routine maintenance shall be provided by the POTW staff.

SECTION B. FLOW

(1) Daily wastewater discharge flows shall be measured using a continuous recording flow meter with a totalizer. Daily logs of the totalizer readings shall be kept with a minimum of one entry per day taken at a standard established time each day.

(2) In accordance with EPA regualations any and all analysis that have been performed by the industry using NPDES approved methods and have been done in addition to the City performed analysis shall be reported to the City no later than the fifteenth (15th) day of each month following the month for which the analysis was performed.

(3) Jerome Cheese Co. shall be responsible for calibration and maintenance of the continuous flow recording system and pH recording system. The City shall be allowed to check or request a check of the calibration of the system at any time.

SECTION C. POLLUTANTS

(1) Continuous sampling of wastewater discharge to the POTW collection system shall be provided for by Jerome Cheese Co.. Samples shall consist of, at a minimum, hourly flow-proportioned samples taken continuously and composited to produce a 24-hour flow-proportioned, composite sample. Samples shall be refrigerated to a temperature of 4°C or below, without freezing, during collection and storage.

(2) Analysis for pH shall be based on the calibrated pH recorder and charts supplied to the POTW on a daily basis for the purposes of determining compliance.

(3) Oil and grease analysis shall be completed twice per year and shall be performed on a grab sample collected on a production day during peak flow.

(4) All required analyses shall be performed according to approved methods in 40 CFR Part 136.

(5) Jerome Cheese Co. shall also comply with the monitoring and reporting requirements in Part IV of this permit.

PART III - SPECIFIC CONDITIONS

A. Jerome Cheese Co. shall pay to the City sewer charges based on the current business contract. The payment of such charges, however, shall not relieve Jerome Cheese Co. from the requirement to meet average and maximum concentrations and loadings provided for in this permit or from penalties for violation of the permit requirements.

B. The permit limitations listed herein have been established based on the City's assessment of the treatment capacity of the POTW Treatment Facility and a fair and reasonable allotment of a portion of that treatment capacity to Jerome Cheese Co.. The permit limitations are not established as a basis for the computation of surcharges and should not be viewed as such. Every effort, including incorporation of best management practices, must be made by Jerome Cheese Co. to continually meet the limitations in this permit in order to aid in maintaining optimum performance of the said treatment facility. Commitment to this basic understanding is hereby a condition of this permit.

C. The permit limitations established herein are based upon two major factors:

(1) The ability of the POTW Treatment Facility to assimilate the loadings from Jerome Cheese Co. and maintain a high quality effluent to the receiving stream(s): and

(2) The desire by the City to maintain a reasonable safety margin between the average daily loading at the POTW Treatment Facility and its treatment capacity.

With these factors in mind, Jerome Cheese Co. shall notify the City well in advance of any proposed change in production or treatment processes which could significantly affect either the volume or character of wastewaters discharged to the POTW collection system. The City will evaluate such proposed changes as related to the City's ability to provide adequate treatment or it's ability to provide an adequate working margin, and a modification to the permit limitations may be considered.

D. Notification of any shutdown period of more than (2) days shall take place at least 48 hours prior to the shutdown period. Notification of any shutdown period of more than (5) days shall be in writing and shall take place at least (2) weeks prior to the first day of shutdown. Notification shall be given to the City and shall include the following:

(1) the date shutdown will start;
(2) the last shift to work on the date of shutdown;
(3) the date process operations will resume; and
(4) the first shift to work on the date of start up.

The strength and characteristics of the wastewater load that is generated during any significant shutdown period shall be approved by the City.

PART IV - STANDARD REQUIREMENTS

SECTION A. GENERAL CONDITIONS

(1) Permit Modification

The City may modify this permit for good cause, including, but not limited to, the following reasons:

a. To incorporate any new or revised federal, State, or local pretreatment standards or requirements; the permittee will be notified of the change(s) and required to develop a compliance schedule if changes in the permittee's treatment process or facility are necessary to insure compliance with the regulatory changes;

b. To address significant alterations or additions to the user's operation, processes, or wastewater volume or character since the time of wastewater discharge permit issuance;

c. A change in the POTW or POTW permit(s) that requires either a temporary or permanent reduction or elimination of the authorized discharge;

d. Information indicating that the permitted discharge poses a threat to the public health or safety, POTW, collection or treatment personnel, or the receiving waters;

e. Violation of any terms or conditions of this permit;

f. Misrepresentations or failure to disclose all relevant facts in the permit application or in any required reporting;

g. Revisions of or a grant of variance from categorical pretreatment standards pursuant to 40 CFR 403.13; or

h. To correct typographical or other errors in this permit.

(2) Toxic Pollutants

If a toxic effluent standard or prohibition is established for a toxic pollutant which is present in the discharge and such standard or prohibition is more stringent than any limitation for such pollutant in this permit, this permit may be revised or modified in accordance with the toxic effluent standard or prohibition and the permittee so notified.

(3) Toxic and Hazardous Substance Liability

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable state law or regulation.

(4) State Laws

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable state law or regulation.

(5) Property Rights

This permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of federal, state or local laws or regulations.

(6) Regulatory Changes

Any changes in federal, State, or local pretreatment regulations that are more stringent than the requirements of this permit shall supersede this permit. The permittee will be notified of the change and required to develop a compliance schedule if changes in the permittee's treatment process or facility are necessary to insure compliance with the regulatory change(s).

(7) Reapplication for Permit Renewal

The permittee is responsible for filing an application for reissuance of the permit a minimum of ninety (90) days prior to the expiration date of this permit.

(8) Permit Transfer

Wastewater discharge permits may be transferred to a new owner or operator only if the permittee gives at least ninety (90) days advance notice to the City and the City approves the wastewater discharge permit transfer. The notice to the City must include a written certification by the new owner or operator which:

a. States that the new owner and/or operator has no immediate intent to change the facility's operations and processes;

b. Identifies the specific date on which the transfer is to occur; and

c. Acknowledges full responsibility for complying with the existing wastewater discharge permit.

Failure to provide notice of a transfer renders the wastewater discharge permit void as of the date of facility transfer.

(9) Severability

The provisions of this permit are severable and, if any provision of this permit or the application of any provision of this permit to any circumstance is held invalid, the application of such provision to other circumstances and the remainder of this permit shall not be affected thereby.

SECTION B. OPERATION AND MAINTENANCE

(1) Proper Operation and Maintenance

The permittee shall at all times maintain in good working order and operate as efficiently as possible all facilities and systems of treatment, control, sampling and measurement installed or used by the permittee to achieve compliance with the terms and conditions of this permit. Proper operation and maintenance includes effective performance, adequate funding, adequate operator staffing and training, and adequate process control.

(2) Need to Halt or Reduce Not a Defense

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

(3) Duty to Mitigate

The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health, the POTW treatment facility, the waters receiving the POTW treatment facility discharge, or the environment.

Reasonable steps include but are not limited to accelerated or additional monitoring and/or analyses necessary to determine the nature and impact of the noncomplying discharge.

(4) Bypass of Treatment System

a. For the purposes of this section,

(i) "Bypass" means the intentional diversion of wastestreams from any portion of the permittee's treatment facility.

(ii) "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the

absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

b. The permittee may allow any bypass to occur which does not cause pretreatment standards or requirements to be violated, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of subsections (c) and (d) of this section.

c. (i) If a permittee knows in advance of the need for a bypass, it shall submit prior notice to the City, at least ten (10) days before the date of the bypass, if possible.

(ii) A permittee shall submit oral notice to the City of an unanticipated bypass that exceeds applicable pretreatment standards within twenty-four (24) hours from the time it becomes aware of the bypass. A written submission shall also be provided within five (5) days of the time the permittee becomes aware of the bypass. The written submission shall contain a description of the bypass and its cause; the duration of the bypass, including exact dates and times, and, if the bypass has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the bypass. The City may waive the written report on a case-by-case basis if the oral report has been received within twenty-four (24) hours.

d. (i) Bypass is prohibited, and the City may take an enforcement action against the permittee for a bypass, unless:

- Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

- There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgement to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance;.

- The permittee submitted notices required under subsection (c) of this section.

(ii) The City may approve an anticipated bypass, after considering its adverse effects, if the City determines that it will meet the three conditions listed in subsection (d) of this section.

(5) Upset Conditions

a. For the purposes of this section, "upset" means an exceptional incident in which there is an unintentional and temporary noncompliance with categorical pretreatment standards because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed or inadequate treatment facilities, lack of preventative maintenance, or careless or improper operations.

b. An upset shall constitute an affirmative defense to an action brought for noncompliance with categorical pretreatment standards if the requirements of subsection (c), below, are met.

c. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

(i) An upset occurred and the permittee can identify the cause(s) of the upset;

(ii) The facility was at the time being operated in a prudent and workman-like manner and in compliance with applicable operation and maintenance procedures; and

(iii) The permittee has submitted the following information to the City within twenty-four (24) hours of becoming aware of the upset. If this information is provided orally, a written submission must be provided within five (5) days:

- A description of the indirect discharge and cause of noncompliance

- The period of noncompliance, including exact dates and times or, if not corrected, the anticipated time the noncompliance is expected to continue

- Steps being taken and/or planned to reduce, eliminate, and prevent recurrence of the noncompliance

d. In any enforcement proceeding, the permittee seeking to establish the occurrence of an upset shall have the burden of proof.

e. Permittee will have the opportunity for a judicial determination on any claim of upset only in an enforcement action brought for noncompliance with categorical pretreatment standards.

f. Permittees shall control production of all discharges to the extent necessary to maintain compliance with categorical pretreatment standards upon reduction, loss, or failure of its treatment facility until the facility is restored or an alternative method of treatment is provided. This requirement applies in the situation where, among other things, the primary source of power of the treatment facility is reduced, lost, or fails.

(6) Removed Substances and RCRA Requirements

Solids, sludges, filter backwash, or other pollutants removed in the course of treatment or control of waste waters shall be disposed of in a manner such as to prevent any pollutants from such materials from entering the sewer system. The permittee is responsible to assure its compliance with any requirements regarding the generation, treatment, storage, and/or disposal of hazardous wastes as defined under the Federal Resource Conservation and Recovery Act and other statutory rules and regulations relative to refuse, liquid and/or solid waste disposal.

(7) Emergency Action

In the event of a power loss to the permittee's treatment facility, the permittee shall provide treatment to the best of his ability and shall report immediately to the City any noncompliance resulting from the emergency situation.

(8) Dilution Not Permitted

The permittee shall not increase the use of potable or process water or, in any way, attempt to dilute a discharge as a partial or complete substitute for adequate treatment to achieve compliance with the limitations contained in this permit.

(9) Disposal of Sludges and Spent Chemicals

The permittee shall dispose of sludges and spent chemicals in accordance with procedures in Section 405 of the Clean Water Act and Subtitles C and D of the Resource Conservation and Recovery Act.

SECTION C. MONITORING

(1) Sampling Facility and Monitoring Equipment

The permittee shall provide a suitable sampling facility(s) together with such necessary manholes, meters and other equipment to facilitate observation, sampling and measurement of the process and/or combined wastes from the permitted discharge.

Such facility(s) and other appurtenances shall be accessibly and safely located and shall be constructed in accordance with plans approved by the City and shall be constructed, operated, and maintained at the permittee's expense.

Such facility(s) and other appurtenances shall be maintained to be safe and accessible at all times and shall be made available for use by the City and/or authorized representatives for surcharge sampling each month and for other sampling upon request.

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(2) Representative Sampling

Samples and measurements taken as required herein shall be representative of the volume and nature of the monitored discharge. All samples shall be taken at the monitoring point(s) specified in this permit and, unless otherwise specified, before the effluent joins or is diluted by any other wastestreams, body of water, or substance. Monitoring points shall not be changed without notification to and approval of the City.

(3) Flow Measurement Devices and Methods

Appropriate flow measurement devices and methods consistent with accepted scientific practices shall be selected and used to insure the accuracy and reliability of measurements of the volume of monitored discharges. The devices shall be installed, calibrated, and maintained by trained personnel to insure that the accuracy of the measurement is consistent with the accepted capability of that device. A calibration log shall be maintained and must include dates of service and calibration, who performed the calibration and the methods used in the calibration. Devices selected shall be capable of measuring flows with a maximum deviation of less than 10% from true discharge rates throughout the range of expected discharge volumes.

(4) Monitoring by Approved Methods

Monitoring must be conducted according to procedures approved under 40 CFR Part 136.

(5) Additional Self-Monitoring

If the permittee monitors any pollutant more frequently than required by this permit, using test procedures approved under 40 CFR Part 136 or as specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the industrial monitoring reports.

(6) Combined Wastestream Formula

The combined wastestream formula shall be applied to industrial facilities that mix unregulated process effluent with other regulated or unregulated wastewaters prior to treatment (40 CFR 403.6). The purpose of the formula is to calculate fixed alternative pollutant limits that shall be applied to the mixed effluent.

SECTION D. REPORTING AND RECORD KEEPING REQUIREMENTS

(1) Description of Non-Compliance

If, during any period, a permittee fails to comply with permit requirements and limitations, the permittee shall, in addition to or as a part of the monitoring report, submit to the City an explanation of the noncompliance, any known or suspected cause, and actions the permittee has taken to prevent further occurrences.

(2) Record Contents

The industry shall maintain records and monitoring information to include:

a. the exact date, location, time and method of sampling;

b. the individual(s) who performed the sampling or measurement;

c. the date(s) analyses were performed;

d. the individual(s) who performed the analyses;

e. the analytical techniques or methods used; and

f. the results of all required analyses.

(3) Averaging Measurements

Calculations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in this permit.

(4) Frequency of Monitoring Reports

Monitoring results shall be reported at the intervals specified in Part II, Sections B and C and Part IV, Section D unless otherwise approved by the City.

(5) Retention of Records

The permittee shall retain records of all monitoring information, including all calibration and maintenance records, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least three (3) years from the date of the sample, measurement, report, or application. This period may be extended by request of the City, the Idaho Department of Environmental Quality, or U.S. EPA at any time.

All records which pertain to matters which are the subject of enforcement or litigation activities shall be retained and preserved by the permittee until all enforcement activities have concluded and all periods of limitation with respect to any and all appeals have expired.

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(6) Planned Changes

The permittee shall notify the City as soon as possible but at least 30 days prior to any planned increase or decrease in the volume or nature of the waste being discharged and any planned physical alterations or additions to the permitted facility. This notification shall be in writing and shall apply to all pollutants whether limited by this permit or not and to any activity which would result in the discharge of those pollutants to the POTW.

(7) Anticipated Noncompliance

The permittee shall give notice to the City as soon as possible but at least 30 days prior to any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

(8) Manifest of Wastes Removed

Jerome Cheese Co. shall provide a manifest or other record of wastes removed by the pretreatment system and disposed of. These records shall be made available to the City upon request.

(9) Compliance Schedule Reporting

Reports of compliance or noncompliance with, or any progress reports on interim and final requirements contained in any compliance schedules shall be submitted no later than fourteen (14) days following each schedule date. Any reports of noncompliance shall include the cause of noncompliance, any remedial actions taken, and the probability of meeting the next scheduled requirement.

(10) Twenty-four Hour Reporting (Spill, Slug, or Noncompliance)

The permittee shall report any spill, slug, or noncompliance to the City as soon as possible but no later than 24 hours from the time the permittee becomes aware of the circumstance(s). Written notification shall be made within 5 days and shall contain a description of the event and the suspected cause; the length of time of the event, including exact dates and times; the impact of the event on the permittee's compliance status; and if the cessation of the event has not occurred, the anticipated period of time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent recurrence of the event.

The following information must be reported within twenty-four (24) hours:

a. any accidental spill of any material specified in the approved ASPP whether discharged to the POTW collection system or not.

b. any slug discharge that could be detrimental to the POTW or the treatment processes or that could pass through to the receiving stream;

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c. any noncompliance with a permit requirement or requirement of local regulations; if sampling performed by a user indicates a violation, the user must notify the City within twenty-four (24) hours of becoming aware of the violation. The user shall also repeat the sampling and analysis and submit the results of the repeat analysis to the City within thirty (30) days after becoming aware of the violation. The user may not be required to resample if the City monitors at the user's facility at least once a month, or if the City samples between the user's initial sampling and when the user receives the results of this sampling.

(11) Discharge of Toxic Substances

The permittee shall notify the City as soon as the permittee knows or has reason to believe:

a. that any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant as defined by the Resource Conservation and Recovery Act (RCRA): or

b. that any activity has occurred or will occur which would result in any discharge, on a non-routine or infrequent basis, of a toxic pollutant as defined by RCRA.

(12) Duty to Provide Information

The permittee shall furnish to the City, within a reasonable time, any information, including that requiring additional monitoring and/or analyses, which the City may request to determine whether cause exists for modifying, revoking and reissuing or terminating this permit or to determine compliance with this permit. The permittee shall also furnish, upon request, copies of records required to be kept by this permit.

(13) Signatory and Certification Requirements

All reports or information submitted pursuant to the requirements of this permit must be signed and certified by the authorized representative of the permittee. An authorized representative is:

(1) If the user is a corporation:

(a) The president, secretary, treasurer, or a vice-president of the corporation in charge of a principle business function, or any other person who performs similar policy or decision-making functions for the corporation; or

(b) The manager of one or more manufacturing, production, or operation facilities employing more than two hundred fifty (250) persons or having gross annual sales or expenditures exceeding twenty-five (25) million dollars (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

(2) If the user is a partnership or sole proprietorship: a general partner or proprietor, respectively.

(3) If the user is a federal, State, or local governmental facility: a director or highest official appointed or designated to oversee the operation and performance of the activities of the government facility, or their designee.

(4) The individuals described in paragraphs 1 through 3, above, may designate another authorized representative if the authorization is in writing, the authorization specifies the individual or position responsible for the overall operation of the facility from which the discharge originates or having overall responsibility for environmental matters for the company, and the written authorization is submitted to the City.

The following certification statement must be included in all user reports:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

A statement containing the name and signature of the authorized representative is contained in Attachment A of this permit.

(14) Availability of Data

Except for data determined to be confidential according to the local regulations of the City, all reports prepared in accordance with terms of this permit shall be available for inspection by the public.

(15) Certification in Lieu of Monitoring

A permittee subject to total toxic organics limitations as part of the metal finishing or electroplating standards may be allowed to submit a Toxic Organic Management Plan (TOMP) in lieu of monitoring. After the TOMP has been approved for the permittee by the City, the permittee must submit a certification statement as part of the semi-annual report (or more frequent reports if required) certifying compliance with the approved TOMP.

JUL 26 2019

SECTION E. RESULTS OF NONCOMPLIANCE

(1) Duty to Comply

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the local regulations of the City and is grounds for enforcement action.

(2) Penalties for Violations of Permit Conditions

a. When the City finds that a user has violated, or continues to violate, any provision of the ordinance, this permit, any order issued pursuant to the ordinance, or any other pretreatment standard or requirement, the City may fine such user in an amount not to exceed one thousand dollars ($1,000.00). Such fines shall be assessed on a per violation, per day basis. In the case of monthly or other long term average discharge limits, fines shall be assessed for each day during the period of violation.

b. Unpaid charges, fines, and penalties shall, after thirty (30) calendar days, be assessed an additional penalty of ten percent (10%) of the unpaid balance, and interest shall accrue thereafter at a rate of two percent (2%) per month. A lien against the user's property will be sought for unpaid charges, fines, and penalties.

c. Users desiring to dispute such fines must file a written request for the City to reconsider the fine along with full payment of the fine amount within thirty (30) days of being notified of the fine. Where a request has merit, the City may convene a hearing on the matter. In the event the user's appeal is successful, the payment, together with any interest accruing thereto, shall be returned to the user. The City may add the costs of preparing administrative enforcement actions, such as notices and orders, to the fine.

d. Issuance of an administrative fine shall not be a bar against, or a prerequisite for, taking any other action against the user.

(3) Permit Revocation and Termination

This permit may be revoked and terminated in accordance with the requirements of the City Ordinance and/or the approved Enforcement Response Plan.

(4) Tampering

Any person who falsifies, tampers with, or knowingly renders inaccurate, any monitoring device or method required to be maintained under this permit shall be subject to civil and/or criminal penalties.

JUL 2 6 2019

(5) Falsification of Reports

The local regulations of the City provide that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or noncompliance shall, upon conviction, be punished by a fine of not more than one thousand dollars ($1000.00) per day.

(6) Publication in Newspaper for Significant Noncompliance

The City Ordinance provides that, in accordance with 40 CFR 403.8(f)(2)(vii), an industrial user will be published at least one time annually in the largest daily newspaper in the municipality of the POTW when found to be in significant noncompliance. An industrial user is in significant noncompliance if its violation meets one or more of the following criteria:

a. Chronic violations of wastewater discharge limits, defined here as those in which sixty-six percent or more of all of the measurements taken during a six-month period exceed (by any magnitude) the daily maximum limit or the average limit for the same pollutant parameter;

b. Technical Review Criteria (TRC) violations, defined here as those in which thirty-three percent or more of all of the measurements for each pollutant parameter taken during a six-month period equal or exceed the product of the daily maximum limit or the average limit multiplied by the applicable TRC (TRC = 1.4 for BOD, TSS, fats, oil, and grease, and 1.2 for all other pollutants except pH);

c. Any other violation of a pretreatment effluent limit (daily maximum or longer-term average) that the City determines has caused, alone or in combination with other discharges, interference or pass through (including endangering the health of POTW personnel or the general public);

d. Any discharge of a pollutant that has caused imminent endangerment to human health, welfare or to the environment or has resulted in the POTW's exercise of its emergency authority to halt or prevent such a discharge;

e. Failure to meet, within 90 days after the schedule date, a compliance schedule milestone contained in a local control mechanism or enforcement order for starting construction, completing construction, or attaining final compliance;

f. Failure to provide, within 30 days after the due date, required reports such as baseline monitoring reports, 90-day compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules;

g. Failure to accurately report noncompliance;

h. Any other violation or group of violations which the City determines will adversely affect the operation or implementation of the local pretreatment program.

(7) Civil and Criminal Liability

Nothing in this permit shall be construed to relieve the permittee from civil or criminal penalties authorized by the ordinance for noncompliance.

PART V - OTHER REQUIREMENTS

SECTION A. RIGHT OF ENTRY

The City, including its authorized representatives, and any authorized representative of the U.S. EPA or State of Idaho Department of Environmental Quality shall have the right to enter upon the premises of any user to determine whether the user is complying with all requirements of the ordinance and this permit. The permittee shall allow authorized representatives ready access to all parts of the premises for the purposes of inspection, sampling, records examination and copying, and the performance of any additional duties.

(1) Where the permittee has security measures in force which require proper identification and clearance before entry into its premises, the permittee shall make necessary arrangements with its security guards so that, upon presentation of suitable identification, authorized representatives will be permitted to enter without delay for the purposes of performing specific responsibilities.

(2) The City shall have the right to set up on the permittee's property, or require installation of, such devices as are necessary to conduct sampling and/or metering of the permittee's operations.

(3) Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the user at the written or verbal request of the City and shall not be replaced. The costs of clearing such access shall be born by the permittee.

(4) Unreasonable delays in allowing authorized representative access to the permittee's premises shall be a violation of the ordinance and this permit.

(5) If the City has been refused access to a building, structure, or property, or any parts thereof, and is able to demonstrate probable cause to believe that there may be a violation of the ordinance, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program of the City designated to verify compliance with the ordinance or this permit or any order issued, or to protect the overall public health, safety and welfare of the community, then the City may seek issuance of a search warrant from the Municipal Court, District Court, or Circuit Court of the City.

SECTION B. ACCIDENTAL SPILL PREVENTION PROGRAM

Issuance of this permit shall be conditional upon the development and approval of an accidental spill prevention plan (ASPP).

Failure of the plan to prevent violations of any other provisions of this permit in no way relieves the permittee from its legal liability for noncompliance with the permit conditions.

At a minimum, the ASPP plan must address the following:

(1) chemical storage areas;
(2) chemical loading and unloading areas;
(3) process tanks; and
(4) removing process tanks from service.

For each of the above categories, describe:

- proximity to the sanitary sewer system
- material compatibility
- transfer of chemicals
- housekeeping/inspections
- secondary containment
- spill contingency
- batch treatment

The ASPP plan must provide for notification of spill events to the proper authorities, including the POTW. The following information should be included in the plan under notification to the POTW and shall be posted on a chain-of-contacts list on information boards and in other applicable areas throughout the plant:

City of Jerome, ATTN: _____

(Address) _____

(Telephone, 24-hours a day) _____

PART VI - DEFINITIONS

A. **Accidental Spill Prevention Program** means the program conducted by the City to track potential spill hazards within the industrial community. It includes requiring an **Accidental Spill Prevention Plan** from each industrial user. This plan identifies the methods of spill prevention, response, and reporting conducted by the industrial user.

B. **ASPP** means accidental spill prevention plan or accidental spill prevention program as defined by the text.

C. **BOD5** means biological oxygen demand measured over a 5-day incubation period.

D. **CFR** means Code of Federal Regulations.

E. **City** means the City of Jerome and its authorized representatives responsible for regulating the local pretreatment program including, but not limited to, the City Administrator.

F. **Composite sample** means a sample comprised of a minimum of 12 aliquots collected over a period of no more than 24 hours. The sample may be collected manually or automatically.

G. **Discharge** means an intentional or unintentional action or omission resulting in the releasing, spilling, leaking, pumping, pouring, emitting, emptying, or dumping of a pollutant into the waters of the State or the U.S., or onto land or into wells from where it might flow or drain into said waters or onto lands outside the jurisdiction of the State. Discharge includes the release of any pollutant into a POTW.

H. **Flow-proportioned** means a composite sample that is collected continuously or discreetly. Discreet sampling may be flow-proportioned either by varying the time interval between each aliquot or the volume of each aliquot. All composites must be flow-proportional to each stream flow at time of collection of aliquot or to the total flow since the previous aliquot.

I. **Grab sample** means an individual sample collected over a period of time not to exceed 15 minutes. It is a single sample taken at neither a specific time nor flow and it is representative of conditions or characteristics of the discharge at the time that it is collected.

J. **mg/L** means milligrams per liter.

K. **NPDES** means National Pollutant Discharge Elimination System and refers to the discharge permit issued to the POTW.

L. **pH** means the acidity or alkalinity of a solution. Neutral is 7.0, acidic is lower and alkaline is higher.

M. **POTW** means the publicly owned treatment works including the collection system, treatment plant and other appurtenances. It also means the municipality having jurisdiction over dischargers to and from the treatment plant.

N. **Significant noncompliance** means the state of noncompliance with pretreatment requirements, as defined in 40 CFR 403.8(f)(2)(vii) and the Ordinance, at which an industrial user is published in the largest daily newspaper in the municipality in which the POTW is located.

O. **TSS** means total suspended solids.

PERMIT NO. _____ Jerome Cheese Co.

ATTACHMENT A - SIGNATORY AUTHORIZATION

All reports and information submitted pursuant to the requirements of discharge permit will be signed and certified by an authorized representative of the permittee, Jerome Cheese Co.. In accordance with this permit, the Ordinance, and 40 CFR Part 403.12, an authorized representative is:

(1) If the user is a corporation:

(a) The president, secretary, treasurer, or a vice-president of the corporation in charge of a principle business function, or any other person who performs similar policy or decision-making functions for the corporation; or

(b) The manager of one or more manufacturing, production, or operation facilities employing more than two hundred fifty (250) persons or having gross annual sales or expenditures exceeding twenty-five (25) million dollars (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

(2) If the user is a partnership or sole proprietorship: a general partner or proprietor, respectively.

(3) If the user is a federal, State, or local governmental facility: a director or highest official appointed or designated to oversee the operation and performance of the activities of the government facility, or their designee.

(4) The individuals described in paragraphs 1 through 3, above, may designate another authorized representative if the authorization is in writing, the authorization specifies the individual or position responsible for the overall operation of the facility from which the discharge originates or having overall responsibility for environmental matters for the company, and the written authorization is submitted to the City.

_____
Authorized representative

_____
Authorized signature

_____
Title

_____
Effective date

If the authorized representative is not (1) or (2) or (3) above, is authorized by:

_____
Name

_____
Signature

_____
Title

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	)	PARTIAL DECREE PURSUANT TO I.R.C.P. 54(b) FOR
Case No. 39576	)	
	)	Water Right 36-04196

1998 JUN 18 PM 1:47

DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED

NAME & ADDRESS:	CITY OF JEROME 152 E A AVE JEROME ID 83338		
SOURCE:	GROUNDWATER		
QUANTITY:	5.68 CFS		
PRIORITY DATE:	07/04/1957		
POINT OF DIVERSION:	T08S R17E S17	SWSESE	
	S18	NESENW	
	S19	NWNWNE	

For filing
Water Rights

TWO POINTS OF DIVERSION LOCATED IN NESENW, S18, T8S, R17E.
THREE POINTS OF DIVERSION LOCATED IN NWNWNE, S19, T8S, R17E.

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	MUNICIPAL	01-01 12-31	5.68 CFS

PLACE OF USE:

PLACE OF USE IS LANDS WITHIN CITY LIMITS OF JEROME.

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.

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

EXHIBIT
G

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	)	PARTIAL DECREE PURSUANT TO
	)	I.R.C.P. 54(b) FOR
Case No. 39576	)	
	)	Water Right 36-04195

1998 JUN 18 PM 1:47

DISTRICT COURT-SRBA
TWIN FALLS CO. IDAHO
FILED

NAME & ADDRESS: CITY OF JEROME
152 E A AVE
JEROME ID 83338

SOURCE: GROUNDWATER

QUANTITY: 0.39 CFS

PRIORITY DATE: 12/31/1907

POINT OF DIVERSION:

T08S R17E	S17	SWSESE	Within JEROME County
	S18	NESENW	
	S19	NWNWNE	

TWO POINTS OF DIVERSION LOCATED IN NESENW, S18, T8S, R17E, B.M.
THREE POINTS OF DIVERSION LOCATED IN NWNWNE, S19, T8S, R17E, B.M.

PURPOSE AND PERIOD OF USE:

PURPOSE OF USE	PERIOD OF USE	QUANTITY
MUNICIPAL	01-01 12-31	0.39 CFS

PLACE OF USE IS LANDS WITHIN CITY LIMITS OF JEROME.

PLACE OF USE:

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.

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

JUL 2 5 2008

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	)	PARTIAL DECREE PURSUANT TO I.R.C.P. 54(b) FOR
Case No. 39576	)	
	)	Water Right 36-02518

1998 JUN 18 PM 1:47

DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED

NAME & ADDRESS: CITY OF JEROME
152 E A AVE
JEROME ID 83338

SOURCE: GROUNDWATER

QUANTITY: 1.11 CFS

PRIORITY DATE: 09/14/1961

POINT OF DIVERSION:

T08S R17E S17	SWSESE	Within JEROME County
S18	NESENW	
S19	NWNWNE	

TWO POINTS OF DIVERSION LOCATED IN NESENW, S18, T8S, R17E, B.M.
THREE POINTS OF DIVERSION LOCATED IN NWNWNE, S19, T8S, R17E, B.M.

PURPOSE AND PERIOD OF USE:

PURPOSE OF USE	PERIOD OF USE	QUANTITY
MUNICIPAL	01-01 12-31	1.11 CFS

PLACE OF USE:

PLACE OF USE IS LANDS WITHIN THE CITY LIMITS OF JEROME.

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.

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

MICRO
JUL 2 3 2003

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	)	PARTIAL DECREE PURSUANT TO
	)	I.R.C.P. 54(b) FOR
Case No. 39576	)	
	)	Water Right 36-08237

1998 JUN 18 PM 1:47

DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED

NAME & ADDRESS: CITY OF JEROME
152 E A AVE
JEROME ID 83338

SOURCE: GROUNDWATER

QUANTITY: 2.71 CFS

PRIORITY DATE: 12/22/1983

POINT OF DIVERSION:

T08S R17E	S17	SWSESE	Within JEROME County
	S18	NESENW	
	S19	NWNWNE	

TWO POINTS OF DIVERSION LOCATED IN NESENW, S18, T8S, R17E.
THREE POINTS OF DIVERISON LOCATED IN NWNWNE, S19, T8S, R17E.

PURPOSE AND PERIOD OF USE:

PURPOSE OF USE	PERIOD OF USE	QUANTITY
MUNICIPAL	01-01 12-31	2.71 CFS

PLACE OF USE:

PLACE OF USE IS LANDS WITHIN CITY LIMITS OF JEROME.

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.

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

JUN 26 2002

TO: Glen Saxton

FROM: John Homan

DATE: August 16, 1999

RE: Public Records Request dated July 23, 1999 for Jerome Cheese Matter

I telephoned Rob Williams on Monday July 26, 1999 to discuss his request for documents. Williams returned my call that afternoon. I explained that the files he requested would be unavailable for inspection on July 27th and 28th because they would be needed at the hearing. Williams indicated that immediate inspection of the documents prior to the hearing was not longer a problem, due to the hearing officer's recent order allowing 21 days to submit additional info after the hearing. Williams indicated that his firm was in the process of associating with other counsel for the water issues in this matter and that person would follow up on the request. Pat Brown inspected the files on Thursday August 5, 1999 at IDWR's State Office.

MICROFILMED
JUL 2 5 2005

FREDERICKSEN, WILLIAMS & MESERVY
ATTORNEYS AT LAW
117 South Adams Street
P. O. Box 168
Jerome, Idaho 83338-0168

EUGENE D. FREDERICKSEN
ROBERT E. WILLIAMS
JAMES C. MESERVY

TELEPHONE: (208) 324-2303
TELECOPIER: (208) 324-3135

July 26, 1999

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

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

Dear Mr. Saxton:

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

Very truly yours,

FREDERICKSEN, WILLIAMS & MESERVY

ROBERT E. WILLIAMS

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

MICROFILMED
JUL 2 6 1999

cc:
Christopher H. Meyer
Michael C Creamer
GIVENS PURSLEY LLP
227 N 6th St Ste 200
PO Box 2720
Boise, ID 83701-2720

Michael Ihler
2635A E 3100 N
Twin Falls, Idaho 83301

Lee Halper
331 S 230 W
Jerome, Idaho 83338

Darcy Thornborrow
1676 E 3800 N
Buhl, Idaho 83316

Bill Chisholm
19073 E Hwy 30
Buhl, Idaho 83316

MICROFILMED

ORIGINAL

RECEIVED
JUL 23 1999
Department of Water Resources

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

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

BEFORE THE
IDAHO DEPARTMENT OF WATER RESOURCES

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

Jerome Cheese,
Applicant

William K. Chisholm,
Lee J. Halper,
Protestants

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

Jerome Cheese,
Applicant

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

APPLICANT JEROME CHEESE'S NOTICE OF SERVICE

MICROFILMED
JUL 2 6 2000

COMES NOW Applicant Jerome Cheese by and through its attorneys and provides this notice of service of supplemental discovery responses. This notice is provided pursuant to Idaho R. Civ. Pro. 33(a)(5) (interrogatories), Idaho R. Civ. Pro. 34(d) (requests for production), and Idaho R. Civ. Pro. 36(c) (requests for admission). These rules are applicable to this contested case per IDAPA 37.01.01.520.02.

The following discovery response has been served:

Applicant Jerome Cheese 's Supplemental Response to Bill Chisholm's First Set of Interrogatories And Requests For Production of Documents and Supplemental Response to Lee Halper's First Set of Interrogatories, Requests for Admission, And Requests For Production of Documents

upon all four Protestants in this matter.

Dated this 22nd day of July, 1999.

GIVENS PURSLEY LLP

By _____
Michael C. Creamer

Attorneys for Applicant
Jerome Cheese Company

MICROFILMED
JUL 26 2000

CERTIFICATE OF SERVICE

I hereby certify that on July 22, 1999 I caused to be served a true and correct copy of the foregoing to each of the persons named below by the method indicated below each of their names.

Mr. William K. Chisholm
19073 E. Hwy. 30
Buhl, ID 83316
☐ U.S. Mail ☐ Fax ☐ By hand ☒ Overnight

Mr. Lee J. Halper
331 South 230 West
Jerome, ID 83338
☐ U.S. Mail ☐ Fax ☐ By hand ☒ Overnight

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

Ms. Darcy Thornborrow
1676 East 3800 North
Buhl, ID 83316
☐ U.S. Mail ☐ Fax ☐ By hand ☒ Overnight

Michael C. Creamer

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

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

BEFORE THE
IDAHO DEPARTMENT OF WATER RESOURCES

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

Jerome Cheese,
Applicant

William K. Chisholm,
Lee J. Halper,
Protestants

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

Jerome Cheese,
Applicant

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

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

MICROFILMED
EXHIBIT A

Comes now Applicant Davisco Foods International, Inc., dba Jerome Cheese, by and through its undersigned counsel, and in response to *Bill Chisholm's First Set of Interrogatories And Requests For Production of Documents Directed to Jerome Cheese Co.* states as follows.

GENERAL OBJECTION: The interrogatories and all of their subparts constitute over forty questions in violation of the Idaho Rules of Civil Procedure. Notwithstanding such objection and without waiving same, Applicant responds as set out below.

RIGHT TO SUPPLEMENT: Jerome Cheese has responded as fully as practicable to these discovery requests. It reserves the right to supplement these responses as additional material and information is discovered or becomes available.

SERVICE: In anticipation of the informal consolidation of Transfer Nos. 5401 and 5436, these responses are being served on all four Protestants involved in both transfers.

RESERVATION OF RIGHTS: None of these responses or documents produced constitute a waiver by Jerome Cheese of any objection to their admission.

INTERROGATORY NO. 1: Please identify each person known to you or to your attorneys who has or may have knowledge of any fact pertinent or relevant as to your proposed Water Transfer Application No. 5401. In your answer to this interrogatory, please include any person who has been retained, hired or relied upon by you, your agents or representatives to review and issues raised by the Application. In your answer, please provide the full name, mailing address, physical address and phone number of each person identified.

RESPONSE TO INTERROGATORY NO. 1:

The Applicant objects to this interrogatory as being over broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence in that it requests, without limitation, the identification of every person with knowledge of the application. Notwithstanding such objections and without waiving same, the Applicant states as follows. The following persons may have knowledge of facts pertinent or relevant to the proposed transfer:

MICROFILMED
JUL 25 2000

Lee Gleasemann, E.L.T
Scott McClure
McClure Engineering
P.O. Box 1404
Twin Falls, ID 83303

Brian Reed, E.I.T
Staff Engineer
Division of Environmental Quality
601 Pole Line Road, Ste. 2
Twin Falls, ID 83301-3035
Office: 208-736-2190

Charles E. Brockway, Ph.D., P.E.
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General Manager
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Mr. Bill Riebesell
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Mr. Karl J. Dreher
Director
Idaho Department of Water Resources
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Statehouse Mail
Boise, ID 83720-9000
Office: 327-7920

Mr. Gary Funderburg
Idaho Department of Water Resources
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Twin Falls, ID 83301-3380
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The Honorable Dennis Moore
Mayor of the City of Jerome
152 East Avenue A
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Mr. Scott L. Bybee,
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Jerome Cheese
47 West 100 South
P.O. Box 485
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Senator John A. Sandy
3104 South 1200 East
Hagerman, ID 83332
(Vendor of water right, Transfer No. 5401)

Mr. Lewis Eilers
Executive Director
Idaho Dairymen's Association
890 Shoshone St. East
Twin Falls, ID 83301
Office: 208-736-1953

Mr. Roy Hincks
2851 W. 900 S.
Sterling, ID 83210
Home: 208-328-2440
(Vendor of water right, Transfer No. 5436)

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Mr. L. Glen Saxton
Idaho Department of Water Resources
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Statehouse Mail
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Mr. James E. Stanton
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Darcy Thornborrow
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City of Jerome
152 East A.
Jerome, ID 83338
Office: 208-324-8189

Mr. Ralph Peters
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Ms. Marjorie Schmidt
City Councilwoman
City of Jerome
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Mr. Joe Skaug
City Councilman
City of Jerome
152 East A.
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Each of the County Commissioners
of Jerome County

Various unknown staff
of the Idaho Division of Environmental Quality

Various unknown staff
of the Idaho Department of Agriculture

INTERROGATORY NO. 2: Please state each and every theory, claim, fact, supposition, scientific study, research or defense upon which you rely as a basis for your claim that this transfer is in compliance with the requirements as stated in Idaho Code 42-222.

ANSWER TO INTERROGATORY NO. 2: The Applicant objects to this interrogatory as being over broad and unduly burdensome in that it may be read to call for an articulation of the Applicant's entire presentation at the upcoming hearing. Moreover, the scope of issues to be heard has not yet been established by the Department. In addition the Protestants have provided to date minimal information—not to mention evasive, unresponsive and entirely unsatisfactory discovery responses—describing the nature and basis of their protests. The question also calls for speculation in that it requests identification at this time of theories, facts, etc. which will respond to and rebut issues and arguments which the Protestants' have not yet articulated. The Applicant will do its best at the hearing to respond to issues raised at that time, but it cannot be expected to anticipate them here and respond in advance. In addition, the Applicant objects on the grounds that the interrogatory calls for information protected by the attorney/client privilege and the attorney work product rule. Notwithstanding such objections and without waiving same, the Applicant states as follows:

The proposed water right transfer complies with the requirements of Idaho Code § 222(1), to wit: "The director of the department of water resources shall examine all the evidence and available information and shall approve the change in whole, or in part, or

upon conditions, provided no other water rights are injured thereby, the change does not constitute an enlargement in use of the original right, the change is consistent with the conservation of water resources within the state of Idaho and is in the local public interest as defined in section 42-203A(5), Idaho Code, and the new use is a beneficial use ...."

With respect to injury, the Applicant will show that the transfer will not result in any increase in the net depletion of the water. The Applicant will show that the former place of use will no longer be served by the part of the water right transferred. The Applicant will show that only the consumptive use portion of the water right is sought to be transferred. The Applicant will also show that the new points of diversion will draw on the same aquifer as the previous points of diversion. The Applicant will show that the new points of diversion will not result in interference with other water rights. The Applicant will show that the change in season and type of use will have no adverse impact on any water user.

With respect to enlargement, the Applicant will show that the proposed change will not result in any greater diversion rate, diversion volume, application, or consumptive use than before the change. In addition, the Applicant's issues on injury overlap with and will respond to the "no enlargement" requirement. See description of water rights attached hereto.

With respect to conservation, the Applicant will show that the proposed use of the water right is consistent with the Prior Appropriation Doctrine, including requirements of beneficial use and the concept of duty of water. The Applicant will further show that it has employed state-of-the art water conservation practices.

With respect to the local public interest, the Applicant will show that the transfer will not adversely affect water resources, the environment, or the economy, and that the proposed water use provides jobs, enhances the community and regional economy, and does not contribute to environmental degradation. The Applicant contends that the local public interest test is not intended to authorize the Idaho Department of Water Resources to look beyond these issues, and does not authorize the Department to evaluate the secondary and tertiary impacts of the Jerome Cheese on the Protestants' preferred life style, and specifically does not authorize the Department to evaluate the impacts of dairy production which Jerome Cheese does not own or control. Nor does the local public interest test authorize the Department to dictate whether a particular beneficial water use is better than another beneficial water use. Nor does the local public interest test authorize the Department to dictate whether the Applicant should select one water supply over another water supply. Nor does the local public interest test authorize the

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Department to consider individual competitive effects of particular water transfers.

The Applicant contends that the Protestants do not have standing to raise any issues with respect to injury or enlargement, and have only limited standing with respect to conservation and local public interest, because they do not own any water rights which could be impacted by the proposed transfer.

INTERROGATORY NO. 3: Please identify every document of which you are aware that supports or tends to support your answer to Interrogatory No. 2 above.

ANSWER TO INTERROGATORY NO. 3: The Applicant renews and incorporates here each of its objections made in response to Interrogatory No. 2 above. Notwithstanding such objections and without waiving same, the Applicant states as follows:

The application is supported by the statements set out in the application filed by the Applicant in this matter, and by each of the pleadings, correspondence, and documents filed with the Department in this matter. It is also supported by the documents which are produced herewith.

INTERROGATORY NO. 4: Please identify all employees, suppliers or investors, of Jerome Cheese Co. who hold public office, or sit on any board that may have regulatory authority over any aspect of Jerome Cheese's operations, or whose relatives hold such positions of authority. In your answer, please provide the names, addresses and telephone numbers, payscale, job description, length of employment, shift position, office held, type of supplier, amount of investment.

ANSWER TO INTERROGATORY NO. 4: The Applicant objects to this interrogatory as being over broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Neither the ownership of Jerome Cheese, nor any suggestion of impropriety, was identified as an issue in this contested case by the Protestants in their protest or at the pre-hearing conference. Notwithstanding such objections and without waiving same, the Applicant states as follows:

To the best of the company's knowledge, no employee, supplier of or investor in Jerome Cheese, nor any relative thereof, holds any public office or sits on any board that may have regulatory authority over any aspect of Jerome Cheese's operations with the exception of the following:

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Mr. Dennis Moore has been employed at Jerome Cheese for over three years in yard maintenance with a flexible shift. He also serves as Mayor of the City of Jerome.

Mr. David Moore has been employed at Jerome Cheese for over six years as an operator on the day shift. He is the son of Dennis Moore.

Neither person is in a position of management or similar authority at Jerome Cheese.

Jerome Cheese declines to provide their home addresses and telephone numbers on privacy grounds.

INTERROGATORY NO. 5: Please identify all owners, investors, partners, banks lienholders, mortgage companies, insurance companies or other people or parties who have a financial interest in Jerome Cheese and any of its affiliated subsidiaries, parent companies or other related business affiliations. In your answer, please specify the exact financial relationship for each party identified, including their positions, if any on the board, as employees, as stockholders, suppliers, or policy empowered shareholders, their names, their agents or representatives names, addresses, telephone numbers and place of employment.

ANSWER TO INTERROGATORY NO. 5: The Applicant objects to this interrogatory as being over broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. The Protestants have raised no issue in their protests or in the pre-hearing conference which has any bearing whatsoever on the information sought by this interrogatory. Moreover, finding, generating, collecting, or presenting the information would be difficult and unduly burdensome on the Applicant. Finally, the Applicant contends that disclosure of the financial information sought by this interrogatory would disclose confidential business information putting the Applicant at a competitive disadvantage. Notwithstanding such objections and without waiving same, the Applicant states as follows:

Davisco Foods International, Inc. dba Jerome Cheese is a closely held corporation incorporated in the State of Minnesota. It is wholly owned by Mark Davis and other family members.

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Mark Davis, President
Davisco Foods International, Inc.
620 North Main Street
Le Suer, Minnesota 56058
Office: 507-665-8811

The family member and owner residing in Idaho is Jon Davis, identified above.

INTERROGATORY NO. 6: Please list all the dairies which supply milk to your business. In your answer, please include the name of the dairy, the name of the owner and manager of the dairy, the address, phone number and legal description of the dairy, the average yearly gallons or pounds of milk supplied by that dairy, the contractual arrangement with the dairy, the base price formula paid to the dairy, the milk transportation costs charged to the dairy if any, and the average yearly reimbursement paid to the dairy for the product supplied and all knowledge you have or can easily determine and supply as to the number of milking cows at each of there [sic] dairies. Also any documentation that speaks to the size of dairies.

ANSWER TO INTERROGATORY NO. 6: The Applicant objects to this interrogatory as being over broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. The Protestants have failed to articulate any particular basis for opposition to the proposed water right transfer. To the extent that Protestants may contend that suppliers of milk to Jerome Cheese are harming the environment or otherwise not in the local public interest, such issues are beyond the scope of the local public interest test, irrelevant, and inadmissible. Moreover, finding, generating collecting, or presenting the information would be difficult and unduly burdensome on the Applicant. Finally, the Applicant contends that disclosure of the financial, contractual and business practice information sought by this interrogatory would disclose confidential business information putting the Applicant at a competitive disadvantage. Notwithstanding such objections and without waiving same, the Applicant states as follows:

Jerome Cheese purchases milk products from a variety of suppliers throughout the Magic Valley. All milk contracts are verbal. Each contract contains a provision requiring strict compliance with applicable environmental and health regulations, and provides financial penalties for violations.

INTERROGATORY NO. 7: Please verify whether Jerome Cheese's Memorandum of Agreement of 12/16/98 with John Sandy for the purchase of 33 inches of water has been extended past the 120 day deadline noted therein and an and [sic]

extension agreement available by mutual consent contained therein been drafted and agreed to. Include in your answer, the persons or departments referred to in Section No. 5 and all documents or evidence obtained to determine this finding.

ANSWER TO INTERROGATORY NO. 7: The referenced contract was extended by a subsequent agreement. A second extension has been proposed. See documents produced herewith. For the convenience of the parties, we are also producing herewith proposed and final contract documents regarding the water right in Transfer No. 5436.

INTERROGATORY NO. 8: On page 2 of your Application to the Department for this transfer under the category "Remarks", you state "Process generates more waste water than what is brought into the plant." Please specify the source of the water that comes into your plant, the daily amount brought in and the daily amount processed out.

ANSWER TO INTERROGATORY NO. 8: Water is a by-product of cheese production. In other words, the extra water comes from the milk brought into the plant, which water is extracted during the cheese production process. Prior to disposal, the extracted water is used and reused numerous times during the production process pursuant to a state-of-the art recycling program. Jerome Cheese objects to the release of statistics regarding milk production on the ground that such information is confidential business information whose release would disadvantage the company. Moreover, Jerome Cheese is claiming no water right in this proceeding in connection with water it extracts from milk. Consequently, quantification of such volumes is unnecessary, burdensome, and irrelevant to this case.

INTERROGATORY NO. 9: Please state the exact reason or reasons for this water transfer. In your answer, delineate all possible scenarios of use, expanded use, future transfer of use, sale, hold for sale, or other possible.

ANSWER TO INTERROGATORY NO. 9: In response to the first question contained within Interrogatory No. 9, the reason the Applicant has filed for this water right transfer is to secure a viable, permanent, reliable, controllable, cost-effective, clean and independent source of water for its industrial use. In response to the second question, the Applicant objects that the question calls for speculation regarding unknown future scenarios. Notwithstanding such objections and without waiving same, the Applicants states:

No water is added to the cheese in the cheese making process. The Applicant uses water within the plant primarily for industrial cleaning purposes. A small amount of water is used for "domestic" purposes within the plant, such as drinking water, toilets,

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sinks, showers, washing up and safety facilities, and the like. In addition, some water is used for industrial irrigation of lawns, etc. on the grounds. This description is provided for illustrative purposes, and is not intended to be exclusive or restrictive.

INTERROGATORY NO. 10: Was the establishment of Jerome Cheese Co. the result of recruitment to Jerome County, Idaho by city, county, or state economic development agencies? If so what were the names of such agencies, the name and principal agents or officials involved. If there were enticements in such recruitment, list the type and economic value of any such enticements.

ANSWER TO INTERROGATORY NO. 10: The Applicant objects to this interrogatory as being over broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. The Protestants have failed to articulate any particular basis for opposition to the proposed water right transfer, and have said nothing in their pleadings or at the prehearing conference which remotely suggests any impropriety or other issue bearing on any incentives which may or may not have been offered to Jerome Cheese. To the extent that Protestants may choose to make an issue of any financial or other incentives which may have been offered to Jerome Cheese in connection with the location of its plant, the Applicant contends that such issues are beyond the scope of the local public interest test, irrelevant, and inadmissible. Moreover, finding, generating, collecting, or presenting records relating to the location of the plant would be difficult and unduly burdensome on the Applicant. Finally, the Applicant contends that disclosure of the information sought by this interrogatory would disclose confidential business information putting the Applicant at a competitive disadvantage. Notwithstanding such objections and without waiving same, the Applicant states as follows:

Prior to locating its current facility in Jerome, Jerome Cheese engaged in discussions with officials of the City of Jerome, Jerome County, and the State of Idaho in which a variety of issues were discussed, including services, taxation, land use and regulatory matters. Jerome Cheese was satisfied with those discussions, and relied upon them in making its decision to locate in Jerome. No special treatment was sought or received, nor was any written agreement entered into with any governmental body providing for incentives or other benefits in connection with the location of Jerome Cheese in Idaho.

INTERROGATORY NO. 11: Supply any and all documents, contracts and agreements that pertain to Interrogatory number 10.

ANSWER TO INTERROGATORY NO. 11: The Applicant incorporates here all

objections made with respect to Interrogatory No. 10.

REQUEST FOR PRODUCTION NO. 1: Please produce each document described or identified or relied upon by you in your response any of the above Interrogatories 1 thru 11.

RESPONSE TO REQUEST FOR PRODUCTION NO. 1: The Applicant incorporates here each and every objection made above to Interrogatory Nos. 1 through 11. Notwithstanding such objections and without waiving same, Applicant is producing the documents identified on the List of Documents Produced, attached as exhibits hereto. Certain of these documents are being withheld pending resolution of Applicant's Motion in Limine and Motion for Protective Order which will be filed separately. All documents not being produced are clearly identified as such, and are being produced to the Hearing Officer on a confidential basis for "in camera" inspection pursuant to said motions.

Dated this 7th day of June, 1999.

GIVENS PURSLEY LLP

By _____
Christopher H. Meyer

Attorneys for Applicant
Jerome Cheese

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VERIFICATION

J. Rex Minchey, acting under authority of and on behalf of Jerome Cheese, being first duly sworn upon oath, deposes and says:

Jerome Cheese is the Applicant in the above-captioned matter. I serve as Maintenance Manager for Jerome Cheese and am authorized by Jerome Cheese to respond to all discovery in this matter on behalf of Jerome Cheese. I have read the foregoing requests and responses. The statements contained therein are true to the best of my knowledge and belief.

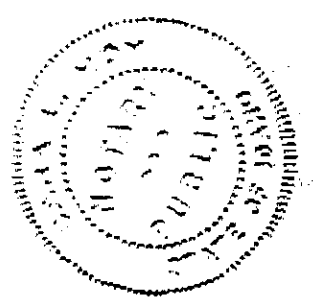
Dated: June 8, 1999

J. Rex Minchey
Maintenance Manager
Jerome Cheese

STATE OF IDAHO)
) ss.
COUNTY OF JEROME)

On this 8 day of June, 1999, before me, a Notary Public, personally appeared J. Rex Minchey, known or identified to me to be the Maintenance Manager of Jerome Cheese, whose name is subscribed to the foregoing instrument on behalf of said corporation, and acknowledged to me that s/he is authorized to and did execute the same on behalf of said corporation.

NOTARY PUBLIC for Idaho
Residing at Jerome, Jerome County, Idaho
My commission expires: 3/13/2003



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LIST OF DOCUMENTS PRODUCED

1. Proposed First Addendum to Agreement with Roy Hincks (w/attachments)
2. Proposed Second Addendum to Agreement with John Sandy (w/attachments)
3. Correspondence with Craig Hobdey and Roy Hincks re water agreements (Hobdey, Dec. 17, 1998, April 16, 1999, May 7, 1999, June 5, 1999) (Hincks, June 5, 1999)
4. Memo of June 6, 1999 from CHM to Consultants
5. Appendix D — Standards for Water Sources
6. Letter from Chuck Brockway to DEQ (May 4, 1999)
7. Project Manual—Technical Specifications for New Well Installation
8. Well Driller's Report
9. Map of Jerome Area
10. Fax from Magic Valley Maid with pump drawings
11. Letter from Chuck Brockway to IDWR (May 5, 1999)
12. Map and Well Driller's Reports
13. Brockway notes
14. Letter from Chuck Brockway to Scott McClure (March 31, 1999)
15. Letter from Dennis Moore to IDWR (May 28, 1999)
16. Letter from Con P. Paulos to IDWR (June 4, 1999)

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JUL 26 2000

LIST OF DOCUMENTS SUBJECT TO IN CAMERA INSPECTION[1]

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

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

CERTIFICATE OF SERVICE

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

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

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

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

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

Christopher H. Meyer

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Michael C. Creamer, Esq.
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Boise, Idaho 83701-2720
Counsel for Applicant Jerome Cheese

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

BEFORE THE
IDAHO DEPARTMENT OF WATER RESOURCES

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

Jerome Cheese,
Applicant

William K. Chisholm,
Lee J. Halper,
Protestants

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

Jerome Cheese,
Applicant

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

APPLICANT JEROME CHEESE 'S RESPONSE TO LEE HALPER'S FIRST SET OF INTERROGATORIES, REQUESTS FOR ADMISSION, AND REQUESTS FOR PRODUCTION OF DOCUMENTS

EXHIBIT B

Comes now Applicant Davisco Foods International, Inc., dba Jerome Cheese, by and through its undersigned counsel, and in response to *Lee Halper's First Set of Interrogatories, Requests for Admissions, and Requests For Production of Documents Directed to Jerome Cheese Company* states as follows.

GENERAL OBJECTION: The interrogatories and all of their subparts constitute over forty questions in violation of the Idaho Rules of Civil Procedure. Notwithstanding such objection and without waiving same, Applicant responds as set out below.

RIGHT TO SUPPLEMENT: Jerome Cheese has responded as fully as practicable to these discovery requests. It reserves the right to supplement these responses as additional material and information is discovered or becomes available.

SERVICE: In light of the informal consolidation of Transfer Nos. 5401 and 5436, these responses are being served on all four Protestants involved in both transfers.

RESERVATION OF RIGHTS: None of these responses or documents produced constitute a waiver by Jerome Cheese of any objection to their admission.

Item 1 (Interrogatory No.1)

Please identify yourself (the person or persons responding to these discovery requests), and identify each and every person with whom you consulted in preparing these responses.

ANSWER:

These responses were prepared by J. Rex Minchey with the assistance of undersigned counsel. In preparing these responses, Mr. Minchey and undersigned counsel consulted with Jon Davis of Jerome Cheese, Michael C. Creamer of Givens Pursley LLP, Charles E. Brockway of Brockway Engineering, and Paul K. Hunter of EnviroSearch International.

Item 2 (Interrogatory No. 2)

Please state whether you have read and understood the instructions and

introductory materials provided above.

ANSWER:

Yes

Item 3 (Interrogatory No. 3)

Please identify each person known to you or to your attorneys who has or may have knowledge of any fact pertinent or relevant as to your proposed Water Transfer Application No. 5401. In your answer to this Interrogatory, please include any person who has been retained, hired or relied upon by you, your agents or representatives to review any issues raised by the Application. In your answer, please provide the full name, mailing address, physical address and phone number of each person identified.

ANSWER:

Please see responses Responses to *Bill Chisholm's First Set of Interrogatories And Requests For Production of Documents Directed to Jerome Cheese Co.* (hereinafter "First Chisholm Discovery").

Item 4 (Interrogatory No. 4)

Please state each and every theory, claim, fact, supposition, scientific study, research or defense upon which you rely as a basis for your claim that this Transfer is in compliance with the requirements as stated in Idaho Code 42-222.

ANSWER:

Please see responses to First Chisholm Discovery.

Item 5 (Request for Production No.1)

Please identify every document of which you are aware that supports or tends to support your answer to Interrogatory 2 above.

ANSWER:

Please see responses to First Chisholm Discovery.

Item 6 (Interrogatory No. 6)

Please identify all employees, full and part-time, of Jerome Cheese Company. In your answer, please provide their addresses, pay scale, job description, length of employment, and shift position. Please include all subcontractors and people and companies hired temporarily and/or providing an ongoing service, their names, addresses, telephone numbers and describe the services performed, pay issued and dates and times of service related to this question. In addition, please list the starting wage and benefit package for a new employee with no experience for each department and/or job description.

ANSWER:

Please see responses to First Chisholm Discovery.

Item 7 (Interrogatory No. 7)

Please identify all owners, investors, partners, banks, lienholders, mortgage companies, insurance companies or other people or parties who have a financial interest in Jerome Cheese Company and any of its affiliated subsidiaries, parent companies or other related business affiliations. In your answer, please specify that exact financial relationship for each party identified, including their positions, if any, on the board, as employees, as stockholders, or policy empowered shareholders, their names, their agents' or representatives names, addresses, telephone numbers and place of employment.

ANSWER:

Please see responses to First Chisholm Discovery.

Item 8 (Interrogatory No. 8)

Please list all dairies by which you are supplied milk for your business. In your answer, please include the name of the dairy, the name of the owner and manager of the dairy, the address, phone number and legal description of the dairy, the average yearly gallons or pounds of milk supplied by that dairy, the contractual arrangement with the dairy, the base price formula paid to the dairy, the milk transportation costs charged to

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the dairy, if any, and the average yearly reimbursement paid to the dairy for the product supplied, and all knowledge you have or can easily determine and supply as to the number of milking cows at each of these dairies.

ANSWER:

Please see responses to First Chisholm Discovery.

Item 9 (Interrogatory No. 9)

Please supply the names, addresses and telephone numbers of all people, companies, corporations or other entities to whom you supply and/or sell your cheese to. In your answer, please provide the contractual agreement with these entities, final destination address of shipment for end use of product sold, and the average yearly pounds of cheese shipped to each entity and the average yearly amount of reimbursement you receive for these shipments previously listed.

ANSWER:

Objection. This interrogatory is over broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. The Protestants have raised no issue in their protests or in the pre-hearing conference which has any bearing whatsoever on the information sought by this interrogatory. Moreover, finding, generating, collecting, or presenting the information would be difficult and unduly burdensome on the Applicant. Finally, the Applicant contends that disclosure of the financial and business information sought by this interrogatory would disclose confidential business information putting the Applicant at a competitive disadvantage.

Item 10 (Interrogatory No. 10)

Please verify whether Jerome Cheese's Memorandum of Agreement of 12\16\98 with John Sandy for the purchase of 33 inches of water has been extended past the 120 day deadline noted therein and an extension agreement available by mutual consent contained therein been drafted and agreed to. Include in your answer, the persons or departments referred to in Section No. 5 and all documents or evidence obtained to determine this finding.

ANSWER:

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Please see responses to First Chisholm Discovery.

Item 11 (Interrogatory No. 11)

On page 2 of your Application to the Department for this transfer under the category 'Remarks', you state "Process generates more wastewater than what is brought into the plant." Please specify the source of the wastewater that comes into your plant, the daily amount brought in and the daily amount processed out.

ANSWER:

Please see responses to First Chisholm Discovery.

Item 12 (Interrogatory No. 12)

Please state the exact reason or reasons for this water transfer. In your answer, delineate all possible and addressed scenarios of use, expanded use, future transfer of use, sale, hold for sale, cessation of present water supply agreements or other possibilities.

ANSWER:

Please see responses to First Chisholm Discovery.

Item 13 (Interrogatory No. 13)

Please provide an accounting of all water used and generated in the operation of the facility. In your answer, include all inputs, outputs and exported water, water used for manufactured product, water used for cleaning and sanitation, et cetera. This accounting should provide a detailed water usage summary and budget for past years and a forecast on future water use. Include a description of all water and wastewater measurement devices and methods or procedures used to monitor these devices. Please include all documents relating to the water and wastewater measurement devices. In your answer, please provide water conservation measures you have implemented for the last 5 years.

ANSWER:

The information sought by this interrogatory is not available. To the extent that such information is generated during the course of preparation for the upcoming hearing, it will be produced.

Item 14 (Interrogatory No. 14)

Please provide a detailed history of your association with regards to your locating your business in Idaho. In your answer, include all people, groups, associations, cities, counties, entities with which you interacted from the time you first considered the possibility of locating in Idaho to the present. Please include all understandings, agreements, verbal contracts, and oral arrangements that passed between your Company and each of these people.

ANSWER:

Please see responses to First Chisholm Discovery.

Item 15 (Interrogatory No. 15)

Please provide a water budget for the whole water right X36-07337E for the last 5 years. In your answer, please provide water conservation measures you have implemented for the last 5 years.

ANSWER:

The information sought by this interrogatory is not available. To the extent that such information is generated during the course of preparation for the upcoming hearing, it will be produced.

Item 16 (Interrogatory No. 16)

Please provide any documentation that proves that you have only a verbal contract with Kraft Foods, International and/or any of its related companies. In your answer, include any contractual arrangements you have with Kraft Foods, as well.

ANSWER:

Please see responses to First Chisholm Discovery.

Item 17 (Interrogatory No. 17)

Please provide any and all contracts that relate to sewer usage and/or wastewater treatment and fresh water supply with regards to your Company's operation in Jerome. In your answer, please provide all pre-contractual memos, notes, understandings, verbal agreements or other data or criteria that steered your Company to its present existing Contracts.

ANSWER:

Objection. This interrogatory is over broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. The Protestants have raised no issue in their protests or in the pre-hearing conference which has any bearing whatsoever on the information sought by this interrogatory. Moreover, finding, generating, collecting, or presenting the information would be difficult and unduly burdensome on the Applicant. Finally, the Applicant contends that disclosure of the financial and business information sought by this interrogatory would disclose confidential business information putting the Applicant at a competitive disadvantage.

Item 18 (Interrogatory No. 18)

Please provide a copy of your Industrial wastewater permit, a list of all violations, the resulting effects of those violation, the regulatory consequences and negotiations of those violations, the stated reasons for those violations and the Company's actions to ensure those violations would not recur. In your answer, please explain in the narrative a description of the above categorizations of violations.

ANSWER:

Objection. This interrogatory is over broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. The Protestants have raised no issue in their protests or in the pre-hearing conference which has any bearing whatsoever on the information sought by this interrogatory. Moreover, finding, generating, collecting, or presenting the information would be difficult and unduly burdensome on the Applicant. Finally, the Applicant contends that disclosure of the financial and business information sought by this interrogatory would disclose confidential business information putting the Applicant at a competitive disadvantage.

Item 19 (Interrogatory No. 19)

Please provide a detailed list of all drugs, medicines, antibiotics, compounds, elements, viruses, bacteria, fungi, microbes and chemicals you test for in the milk. In your answer, provide the procedure, time frame, degree of accuracy, legal requirements, and process involved in this testing as well as all reporting agencies involved.

ANSWER:

Objection. This interrogatory is over broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. The Protestants have raised no issue in their protests or in the pre-hearing conference which has any bearing whatsoever on the information sought by this interrogatory. Moreover, finding, generating, collecting, or presenting the information would be difficult and unduly burdensome on the Applicant. Finally, the Applicant contends that disclosure of the financial and business information sought by this interrogatory would disclose confidential business information putting the Applicant at a competitive disadvantage.

Item 20 (Interrogatory No. 20)

Please provide the procedures involved if you find a contaminated (as per Item 19) truckload of milk. In your answer, describe the procedure for identifying the contaminated tanker, where the tanker is held, the time necessary for all tests to be run and how this affects the waiting tanker and the eventual destination of the contaminated milk.

ANSWER:

Objection. This interrogatory is over broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. The Protestants have raised no issue in their protests or in the pre-hearing conference which has any bearing whatsoever on the information sought by this interrogatory. Moreover, finding, generating, collecting, or presenting the information would be difficult and unduly burdensome on the Applicant. Finally, the Applicant contends that disclosure of the financial and business information sought by this interrogatory would disclose confidential business information putting the Applicant at a competitive disadvantage. Notwithstanding these objections and without waiving same, the Applicant refers the Protestant to Applicant's response to Interrogatory No. 6 of Chisholm's First Discovery.

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Item 21 (Interrogatory No. 21)

Please provide the annual budget and systems loading budget for your pretreatment facility.

ANSWER:

Objection. This interrogatory is over broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. The Protestants have raised no issue in their protests or in the pre-hearing conference which has any bearing whatsoever on the information sought by this interrogatory. Moreover, finding, generating, collecting, or presenting the information would be difficult and unduly burdensome on the Applicant. Finally, the Applicant contends that disclosure of the financial and business information sought by this interrogatory would disclose confidential business information putting the Applicant at a competitive disadvantage.

Item 22 (Interrogatory No. 22)

Please list all other places of business that are operated in direct association with your Company. In your answer, list the State, address, telephone number, name of Executive in Charge of the ancillary or subsidiary business, the degree of association both legally and financially.

ANSWER:

Objection. This interrogatory is over broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. The Protestants have raised no issue in their protests or in the pre-hearing conference which has any bearing whatsoever on the information sought by this interrogatory. Moreover, finding, generating, collecting, or presenting the information would be difficult and unduly burdensome on the Applicant. Finally, the Applicant contends that disclosure of the financial and business information sought by this interrogatory would disclose confidential business information putting the Applicant at a competitive disadvantage.

Item 23 (Interrogatory No. 23)

Please list all Company and Directors and Executive's charitable donations, political donations and contributions to community efforts made since locating to Idaho.

In your answer, provide a separate list of monies derived from I.S.D.A. pulled milk permit sales, the charities receiving said monies, the dairies associated with each donation, and the tax benefit derived by this donation and the name of the person or Company deriving said tax benefit.

ANSWER:

Objection. This interrogatory is over broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. The Protestants have raised no issue in their protests or in the pre-hearing conference which has any bearing whatsoever on the information sought by this interrogatory. Moreover, finding, generating, collecting, or presenting the information would be difficult and unduly burdensome on the Applicant. Finally, the Applicant contends that disclosure of the financial and business information sought by this interrogatory would disclose confidential business information putting the Applicant at a competitive disadvantage.

Item 24 (Interrogatory No. 24)

Please indicate the final destination, beneficial use and name of water right holder of the potable wastewater that is discharged daily into the North Side Canal Company system. In your answer, provide the total yearly number of gallons discharged, the certification testing requirements and the extent of the review extended to alternate uses of this water.

ANSWER:

The Applicant does not possess this information. Moreover, the Applicant objects to this interrogatory is over broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. The Protestants have raised no issue in their protests or in the pre-hearing conference which has any bearing whatsoever on the information sought by this interrogatory. Moreover, finding, generating, collecting, or presenting the information would be difficult and unduly burdensome on the Applicant. Finally, the Applicant contends that disclosure of the financial and business information sought by this interrogatory would disclose confidential business information putting the Applicant at a competitive disadvantage.

Item 25 (Interrogatory No. 25)

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Please describe the major development you have started as referenced in the IDWR memo of December 18, 1998. In your answer, describe how this Transfer is necessary for this development, or not, and how the denial of this Transfer will affect this development.

ANSWER:

The Applicant intends to expand its operation and increase its level of cheese and whey production. However, water is not an input into the production of the cheese and whey products themselves. Rather, water is required at the plant for other purposes, as described in our responses to Chisholm's First Discovery. These other uses are expected to remain relatively constant, despite future increases in cheese and whey production. Consequently, additional water supplies are not required to facilitate the anticipated expansion. Rather, as explained in our responses to Chisholm's First Discovery, the water sought pursuant to the pending application is needed to replace and/or supplement existing supplies and to secure a viable, permanent, reliable, controllable, cost-effective, clean and independent source of water for its industrial use

Item 26 (Interrogatory No. 26)

Please list all alternatives open to you to obtain more water including this transfer. In your answer, include all projected financial comparisons for each option, including this transfer.

ANSWER:

Please see responses to First Chisholm Discovery.

Item 27 (Request for Admission No. 1)

Please admit that this water right was forfeit[ed].

ANSWER:

Denied.

Item 28 (Interrogatory No. 27)

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If your response to Item 27 is anything other than an unqualified admission, please state each and every fact and legal theory, case and statute which you contend supports your claim that this water right is not forfeit.

ANSWER:

Objection. This issue was not raised in the prehearing conference nor in the protest, pleadings, or discovery. Consequently, Applicant objects that the issue cannot be raised at this stage of the proceeding. Notwithstanding such objection and without waiving same, the Applicant states that it has no information suggesting or supporting that a forfeiture has occurred.

Item 29 (Request for Production No. 2)

If your response to Item 27 is anything other than an unqualified admission, please produce any and all documents which bear upon or provide evidence with respect to your proof that this water right is not forfeit.

ANSWER:

None.

Item 30 (Request for Admission No. 2)

Please admit that this Transfer will injure other water rights.

ANSWER:

Denied.

Item 31 (Interrogatory No. 28)

If your response to Item 30 is anything other than an unqualified admission, please state each and every fact which you contend supports your claim that the proposed Transfer will not injure other water rights.

ANSWER:

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Our consultants are now in the process of collecting and analyzing data and preparing their presentations with respect to injury and enlargement. As information and documents become available, they will be made available through supplementation of these responses.

Item 32 (Request for Production No. 3)

If your response to Item 30 is anything other than an unqualified admission, please produce any and all documents which bear upon or provide evidence with respect to your proof that this Transfer will not injure other water rights.

ANSWER:

Same as Answer to Item 31 above.

Item 33 (Request for Admission No. 3)

Please admit that this Transfer will constitute an enlargement in the use of the original right.

ANSWER:

Denied.

Item 34 (Interrogatory No. 29)

If your response to Item 33 is anything other than an unqualified admission, please state each and every fact which you contend supports your claim that the proposed Transfer will not constitute an enlargement in the use of the original right.

ANSWER:

First, applicant contends that enlargement is not an issue in a transfer proceeding in which the original use(s) of the water are ended and entirely new use(s) are substituted. Second, to the extent enlargement is an issue, no enlargement would occur here because there is no increase in the use or application of water. Only the consumptive use component will be transferred.

Item 35 (Request for Production No. 4)

If your response to Item 30 is anything other than an unqualified admission, please produce any and all documents which bear upon or provide evidence with respect to your proof that this Transfer will not constitute an enlargement of the water right.

ANSWER:

Please see documents produced with Chisholm's First Discovery.

Item 36 (Request for Admission No.4)

Please admit that this Transfer is not in the public interest.

ANSWER:

Denied.

Item 37 (Interrogatory No. 30)

If your response to Item 36 is anything other than an unqualified admission, please state each and every fact with you contend supports your claim that the proposed Transfer is in the public interest.

ANSWER:

Please see responses and documents produced in connection with Chisholm's First Discovery.

Item 38 (Request for Production No. 5)

If your response to Item 36 is anything other than an unqualified admission, please produce any and all documents which bear upon or provide evidence with respect to your proof that this Transfer is in the public interest.

ANSWER:

Please see documents produced in connection with Chisholm's First Discovery.

Item 39 (Request for Admission No. 5)

Please admit that you see basis to the claim that this Transfer could, under any conditions, be detrimental to the public interest.

ANSWER:

We do not understand the question. If the thrust of the request for admission is that there are no conditions under which approval of the transfer application would be in the public interest, we deny.

Item 40 (Interrogatory No. 31)

If your response to Item 39 is anything other than an unqualified admission, please state each and every fact which you contend supports your claim that the proposed Transfer could not, under any condition, be detrimental to the public interest.

ANSWER:

Please see Answer to Item 39.

Item 41 (Request for Production No. 6)

If your response to Item 39 is anything other than an unqualified admission, please produce any and all documents which bear upon or provide evidence with respect to your proof that this Transfer could not, under any condition, be detrimental to the public interest.

ANSWER:

Please see Answer to Item 39. Also see documents produced in connection with Chisholm's First Discovery.

Item 42 (Request for Admission No. 6)

Please admit that this Transfer is not consistent with the conservation of water resources within the State of Idaho.

ANSWER:

Denied.

Item 43 (Interrogatory No. 32)

If your response to Item 42 is anything other than an unqualified admission, please state each and every fact which you contend supports your claim that the proposed Transfer is consistent with the conservation of water resources within the State of Idaho.

ANSWER:

Please see responses to Chisholm's First Discovery.

Item 44 (Request for Production No. 7)

If your response to Item 42 is anything other than an unqualified admission, please produce any and all documents which bear upon or provide evidence with respect to your proof that this Transfer is consistent with the conservation of water resources within the State of Idaho.

ANSWER:

Please see prior answers.

Item 45 (Request for Admission No. 7)

Please admit that this Transfer will constitute a consumptive use.

ANSWER:

We are not certain that we understand this question. The proposed use is a consumptive use in the sense that some of the water diverted will be consumed or lost in the course of beneficial use. In this sense, it is no different from virtually any other industrial or agricultural water right.

Item 46 (Interrogatory No. 33)

If your response to Item 45 is anything other than an unqualified admission, please state each and every fact which you contend supports your claim that the proposed Transfer will not constitute a consumptive use.

ANSWER:

Please see response to Item 45.

Item 47 (Request for Production No. 8)

If your response to Item 45 is anything other than an unqualified admission, please produce any and all documents which bear upon or provide evidence with respect to your proof that this Transfer will not constitute a consumptive use.

ANSWER:

Please see response to Item 45.

Item 48 (Request for Admission No. 8)

Please admit that this Transfer constitutes a change in the nature of use from agricultural to commercial/industrial use.

ANSWER:

Admitted.

Item 49 (Interrogatory No. 34)

If your response to Item 48 is anything other than an unqualified admission, please state each and every fact which you contend supports your claim that the proposed Transfer does not constitute a change in the nature of use from agricultural to commercial/industrial use.

ANSWER:

The proposed change in use to industrial is stated on the application. Also see documents produced in connection with Chisholm's First Discovery.

Item 50 (Request for Production No. 9)

If your response to Item 48 is anything other than an unqualified admission, please produce any and all documents which bear upon or provide evidence with respect to your proof that this Transfer does not constitute a change in the nature of use from agricultural to commercial/industrial use.

ANSWER:

The proposed change in use to industrial is stated on the application. Also see documents produced in connection with Chisholm's First Discovery.

Item 51 (Request for Admission No.9)

Please admit that you own no water rights.

ANSWER:

Denied.

Item 52 (Interrogatory No. 35)

If your response to Item 51 is anything other than an unqualified admission, please identify each water right you own wherein the water from each right is not physically connected in reality.

ANSWER:

Jerome Cheese has purchased the two water rights which are subject to transfer applications No. 5401 and 5436. As contract documents which have been produced show, full payment is not required until the transfers are approved by the Department. Jerome Cheese owns no other water rights. We do not know what the Protestant means by "wherein the water from each right is not physically connected in reality." If the intent is to inquire whether the proposed new point(s) of diversion (after transfer) will draw from the same aquifer as the original point(s) of diversion (before transfer), the Applicant contends that this is the case.

Item 53 (Request for Production No. 10)

If your response to Item 51 is anything other than an unqualified admission, please produce any and all documents which bear upon or provide evidence with respect to your proof that the water from each right is not physically connected in reality.

ANSWER:

Please see response to Item No. 52.

Our consultants are now in the process of collecting and analyzing data and preparing their presentations with respect to injury and, in particular, the impact of the change in point of diversion. As information and documents become available, they will be made available through supplementation of these responses.

Item 54 (Request for Admission No. 10)

Please admit that expansion of your Company has the overall effect of increasing the overall consumptive use of groundwater by requiring the need for more dairy cows.

ANSWER:

We are without sufficient information to admit or deny. Consequently, we deny.

Item 55 (Interrogatory No. 36)

If your response to Item 54 is anything other than an unqualified admission, please state each and every fact which you contend supports your claim that the expansion of your Company does not require the need for more dairy cows.

ANSWER:

Please see response to Item 54.

Item 56 (Request for Production No. 11)

If your response to Item 54 is anything other than an unqualified admission, please produce any and all documents which bear upon or provide evidence with respect to your proof that the expansion of your Company does not require the need for more dairy cows.

ANSWER:

Please see response to Item 54. Also, see documents produced in conjunction with Chisholm's First Discovery.

Item 57 (Request for Admission No. 11)

Please admit that you know the limits of the sustainability or natural cycle or chemical balance of dairy nutrients (manure) and wastewater when land applied, in a cow per acre relationship.

ANSWER:

Denied.

Item 58 (Interrogatory No. 37)

If your response to Item 57 is anything other than an unqualified admission, please state each and every fact which you contend supports your claim that you do not know the limits of the sustainability or natural cycle or chemical balance of dairy nutrients (manure) and wastewater when land applied, in a cow per acre relationship.

ANSWER:

Objection. This interrogatory is ambiguous, over broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Moreover, finding, generating, collecting, or presenting the information would be difficult and unduly burdensome on the Applicant.

Item 59 (Interrogatory No. 38)

If your response to Item 57 is in the negative please state all efforts made by your Company to obtain knowledge, prior to this Discovery, as to these limits and whether you believe these limits should affect your proposed Transfer.

ANSWER:

Objection. This interrogatory is ambiguous, over broad, unduly burdensome, and

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not reasonably calculated to lead to the discovery of admissible evidence. Moreover, finding, generating, collecting, or presenting the information would be difficult and unduly burdensome on the Applicant.

Item 60 (Interrogatory No. 39)

In regards to the limits referenced in Item 57, if it is found by reliable scientific sources, such as U.S.G.S., D.E.Q. or I.S.D.A. that these limits have been exceeded, would you support possible action to have these limits met?

ANSWER:

Objection. This request documents the ulterior motive of the Protestant, which has nothing whatsoever to do with the water right transfer at issue. The Applicant objects to this interrogatory is over broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Moreover, finding, generating, collecting, or presenting the information would be difficult and unduly burdensome on the Applicant. Notwithstanding these objections and without waiving same, Jerome Cheese states that officials and representatives of the Idaho Dairymen's Association, the Idaho Department of Agriculture, and the Idaho Division of Environmental Quality may have information pertaining to this subject, and could be called as witnesses, if necessary and appropriate.

Item 61 (Interrogatory No. 40)

If the action referenced in Item 60 was limited to reducing the number of dairy cows because there is not enough available land for manure application and cost of transporting manure to other available land is prohibitive, would you support this action?

ANSWER:

Objection. This request documents the ulterior motive of the Protestant, which has nothing whatsoever to do with the water right transfer at issue. The Applicant objects to this interrogatory is over broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Moreover, finding, generating, collecting, or presenting the information would be difficult and unduly burdensome on the Applicant. Notwithstanding these objections and without waiving same, Jerome Cheese states that officials and representatives of the Idaho Dairymen's

Association, the Idaho Department of Agriculture, and the Idaho Division of Environmental Quality may have information pertaining to this subject, and could be called as witnesses, if necessary and appropriate.

Item 62 (Request for Admission No. 12)

Please admit that land application of cow manure and wastewater is polluting the Snake River Plain Aquifer.

ANSWER:

Objection. This request documents the ulterior motive of the Protestant, which has nothing whatsoever to do with the water right transfer at issue. The Applicant objects to this interrogatory is over broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Moreover, finding, generating, collecting, or presenting the information would be difficult and unduly burdensome on the Applicant. Notwithstanding these objections and without waiving same, Jerome Cheese states that officials and representatives of the Idaho Dairymen's Association, the Idaho Department of Agriculture, and the Idaho Division of Environmental Quality may have information pertaining to this subject, and could be called as witnesses, if necessary and appropriate.

Item 63 (Interrogatory No. 41)

If your response to Item 62 is anything other than an unqualified admission, please state each and every fact which you contend supports your claim that land application of cow manure and wastewater is not polluting the Snake River Plain Aquifer.

ANSWER:

Objection. This request documents the ulterior motive of the Protestant, which has nothing whatsoever to do with the water right transfer at issue. The Applicant objects to this interrogatory is over broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Moreover, finding, generating, collecting, or presenting the information would be difficult and unduly burdensome on the Applicant. Notwithstanding these objections and without waiving same, Jerome Cheese states that officials and representatives of the Idaho Dairymen's Association, the Idaho Department of Agriculture, and the Idaho Division of

Environmental Quality may have information pertaining to this subject, and could be called as witnesses, if necessary and appropriate.

Item 64 (Request for Production No. 12)

If your response to Item 62 is anything other than an unqualified admission, please produce any and all documents which bear upon or provide evidence with respect to your proof that land application of cow manure and wastewater is not polluting the Snake River Plain Aquifer.

ANSWER:

Objection. This request documents the ulterior motive of the Protestant, which has nothing whatsoever to do with the water right transfer at issue. The Applicant objects to this interrogatory is over broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Moreover, finding, generating, collecting, or presenting the information would be difficult and unduly burdensome on the Applicant. Notwithstanding these objections and without waiving same, Jerome Cheese states that officials and representatives of the Idaho Dairymen's Association, the Idaho Department of Agriculture, and the Idaho Division of Environmental Quality may have information pertaining to this subject, and could be called as witnesses, if necessary and appropriate.

Item 65 (Request for Admission No. 13)

Please admit that trends in scientific studies are viable indicators of changing conditions.

ANSWER:

It is admitted that trend data may be "viable indicators" in some instances, depending on the quality of the data, analysis and other factors. The statement is denied to the extent it is offered as a statement of absolute or universal applicability.

Item 66 (Interrogatory No. 42)

If your response to Item 65 is anything other than an unqualified admission, please state each and every fact which you contend supports your claim that trends in scientific

studies are not viable indicators of changing conditions.

ANSWER:

Please see response to Item 65. The Applicant is unable to make a more detailed response, as the Protestant has not identified which trend or scientific study he has in mind.

Item 67 (Request for Production No. 13)

If your response to Item 65 is anything other than an unqualified admission, please produce any and all documents which bear upon or provide evidence with respect to your proof that trends in scientific studies are not viable indicators of changing conditions.

ANSWER:

Please see response to item 66.

Item 68 (Request for Admission No. 14)

Please admit that you trust the scientific integrity of the United States Geological Survey.

ANSWER:

Denied. Although the Applicant has no reason to doubt the integrity of this governmental body, the statement is too vague and general to enable an unqualified admission. Moreover, the Protestant has failed to identify which study, report, finding, or conclusion of the U.S.G.S. it is speaking of.

Item 69 (Interrogatory No. 43)

If your response to Item 68 is anything other than an unqualified admission, please state each and every fact which you contend supports your claim that the U.S.G.S.'s scientific integrity should be suspect.

ANSWER:

Applicant has no basis on which to doubt the integrity of the U.S.G.S. That does not mean that the Applicant agrees with every study, report, finding, or conclusion of the U.S.G.S.

Item 70 (Request for Production No. 14)

If your response to Item 68 is anything other than an unqualified admission, please produce any and all documents which bear upon or provide evidence with respect to your proof that the U.S.G.S.'s scientific integrity should be suspect.

ANSWER:

We have no documents to produce in this regard.

Item 71 (Request for Admission No. 15)

Please admit that Jerome Cheese Company maintains an unsafe work environment according to standards set by O.S.H.A.

ANSWER:

Objection. This request is over broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Moreover, finding, generating, collecting, or presenting the information would be difficult and unduly burdensome on the Applicant. Notwithstanding these objections and without waiving same, Jerome Cheese denies the request for admission.

Item 72 (Interrogatory No. 44)

If your response to Item 71 is anything other than an unqualified admission, please state each and every fact which you contend supports your claim that Jerome Cheese maintains a safe work environment according to standards set by O.S.H.A.

ANSWER:

Objection. This request is over broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Moreover, finding, generating, collecting, or presenting the information would be difficult and unduly

burdensome on the Applicant.

Item 73 (Request for Production No. 15)

If your response to Item 71 is anything other than an unqualified admission, please produce any and all documents which bear upon or provide evidence with respect to your proof that Jerome Cheese maintains a safe work environment according to standards set by O.S.H.A. Please include a list of all violations issued by O.S.H.A.

ANSWER:

Objection. This request is over broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Moreover, finding, generating, collecting, or presenting the information would be difficult and unduly burdensome on the Applicant.

Item 74 (Request for Admission No. 16)

This request is directed specifically to Givens Pursley. Please admit that your firm never uses electronic means [in] conferences, depositions or taking of testimony.

ANSWER:

Objection. Givens Pursley LLP is not a party to this administrative litigation and is not subject to interrogatories or similar discovery. Moreover, the question is not reasonably calculated to lead to the introduction of admissible evidence. Notwithstanding such objections and without waiving same, Givens Pursley LLP denies the request for admission.

Item 75 (Interrogatory No. 45)

If your response to Item 74 is anything other than an unqualified admission, please provide the approximate number of electronically held conferences, depositions or taking of testimony your firm handled in 1998.

Objection. Givens Pursley LLP is not a party to this administrative litigation and is not subject to interrogatories or similar discovery. Moreover, the question is not reasonably calculated to lead to the introduction of admissible evidence. Moreover,

finding, generating, collecting, or presenting the information would be difficult and unduly burdensome on Givens Pursley LLP. Notwithstanding such objections and without waiving same, Givens Pursley LLP states that it frequently employs electronic means for procedural conferences. It occasionally employs electronic means for oral arguments. It never (to the undersigned counsel's recollection) has employed electronic means for a hearing involving the interrogation of witnesses and the offering of evidence.

Dated this 9th day of June, 1999.

GIVENS PURSLEY LLP

By _____
Christopher H. Meyer

Attorneys for Applicant
Jerome Cheese

VERIFICATION

J. Rex Minchey, acting under authority of and on behalf of Jerome Cheese, being first duly sworn upon oath, deposes and says:

Jerome Cheese is the Applicant in the above-captioned matter. I serve as Maintenance Manager for Jerome Cheese and am authorized by Jerome Cheese to respond to all discovery in this matter on behalf of Jerome Cheese. I have read the foregoing requests and responses. The statements contained therein are true to the best of my knowledge and belief.

Dated: June 9 1999

J. Rex Minchey
Maintenance Manager
Jerome Cheese

STATE OF IDAHO)
) ss.
COUNTY OF JEROME)

On this 9 day of June, 1999, before me, a Notary Public, personally appeared J. Rex Minchey, known or identified to me to be the Maintenance Manager of Jerome Cheese, whose name is subscribed to the foregoing instrument on behalf of said corporation, and acknowledged to me that s/he is authorized to and did execute the same on behalf of said corporation.

NOTARY PUBLIC for Idaho
Residing at Jerome, Idaho
My commission expires: 3/13/2003

CERTIFICATE OF SERVICE

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

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

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

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

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

Christopher H. Meyer

VERIFICATION

J. Rex Minchey, acting under authority of and on behalf of Jerome Cheese, being first duly sworn upon oath, deposes and says:

Jerome Cheese is the Applicant in the above-captioned matter. I serve as Maintenance Manager for Jerome Cheese and am authorized by Jerome Cheese to respond to all discovery in this matter on behalf of Jerome Cheese. I have read the foregoing requests and responses. The statements contained therein are true to the best of my knowledge and belief.

Dated: June 9 1999

J. Rex Minchey
Maintenance Manager
Jerome Cheese

STATE OF IDAHO)
) ss.
COUNTY OF JEROME)

On this 9 day of June, 1999, before me, a Notary Public, personally appeared J. Rex Minchey, known or identified to me to be the Maintenance Manager of Jerome Cheese, whose name is subscribed to the foregoing instrument on behalf of said corporation, and acknowledged to me that s/he is authorized to and did execute the same on behalf of said corporation.

Sara L Hoy
NOTARY PUBLIC for Idaho
Residing at Jerome, Idaho
My commission expires: 3/13/2003

MICROFILMED
JUL 26 2000

FREDERICKSEN, WILLIAMS & MESERVY
ATTORNEYS AT LAW
117 South Adams Street
P. O. Box 168
Jerome, Idaho 83338-0168

Eugene D. Fredericksen
Robert E. Williams III
James C. Meservy

Telephone: (208) 324-2303
Telecopier: (208) 324-3135

TELECOPIER COVER SHEET

TO Mr. Glen Saxton — FAX NO. 208 327 7866

Hearing Officer — DATE 7-23-99

Matter: Application for Transfer Nos. 5401 & 5436

From: ☐ Eugene D. Fredericksen ☒ Robert E. Williams ☐ James C. Meservy

☐ original will follow by mail ★ ☐ original will not follow by mail

WE'RE TRANSMITTING 2 PAGES, INCLUDING THIS PAGE. IF YOU DON'T RECEIVE ALL PAGES, CALL (208) 324-2303 AND ASK FOR Sheila. THE DOCUMENTS ACCOMPANYING THIS TELECOPY TRANSMISSION CONTAIN INFORMATION WHICH IS CONFIDENTIAL AND/OR PRIVILEGED. THE INFORMATION IS INTENDED FOR THE USE OF THE INDIVIDUAL/ENTITY NAMED ABOVE. IF YOU ARE NOT THE INTENDED RECIPIENT, BE AWARE THAT ANY DISCLOSURE, COPYING, DISTRIBUTION, OR USE OF THE CONTENTS OF THIS TELECOPIED INFORMATION IS STRICTLY PROHIBITED. IF YOU'VE RECEIVED THIS TELECOPY IN ERROR, PLEASE NOTIFY US BY TELEPHONE WITHOUT DELAY.

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Jerome, Idaho 83338-0168

EUGENE D. FREDERICKSEN
ROBERT E. WILLIAMS
JAMES C. MESERVY

Telephone: (208) 324-2303
Telecopier: (208) 324-3135
E-mail: fwmattys@northrim.net

July 23, 1999

Karilynn Townsend
Custodian of Records
Idaho Department of Water Resources
1301 North Orchard Street
Boise, ID 83706

Mr. Glen Saxton
Hearing Officer
Department of Water Resources
1301 North Orchard Street
Boise, ID 83706

Re: Application for Transfer Nos. 5401 and 5436

Dear Ms. Townsend and Mr. Saxton:

Pursuant to Idaho Code 9-337, et seq., request is made under the Public Writings Act for all writings pertaining to any matter relating to the two above transfer applications or any proceedings thereon. You have three days to respond. I look forward to hearing from you within that time frame so that we may arrange a full inspection and copying of all such records. I also agree to pay the reasonable copying charges for that inspection.

I want to be sure that you are aware that I want all electronic mail and other matters which also pertain to these transfer applications. Additionally, if you claim that any writings are exempt from production, please identify the specific document and the exception you claim to apply to each particular document or writing.

I look forward to hearing from you soon and appreciate your prompt response to this request.

Very truly yours,

FREDERICKSEN, WILLIAMS & MESERVY

ROBERT E. WILLIAMS

MICROFILMED

JUL 26 2000

REW/mf
cc: Client
C:\Marie's Files\Letters\saxton.723

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

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

July 23, 1999

RE: In the Matter of Applications for Transfer Nos. 5401 and 5436 in the name of Jerome Cheese Company

Dear Interested Party:

I have enclosed a copy of the Order Rejecting Motion for Reconsideration and Motion to File a Late Protest, issued in connection with above referenced transfer applications.

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

Sincerely,

Julie L. Yarbrough

JULIE L. YARBROUGH, Administrative Assistant
Water Allocation Bureau

Enclosure

c: IDWR - Southern

MICROFILMED
JUL 2 5 2000

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

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

July 23, 1999

RE: In the Matter of Applications for Transfer Nos. 5401 and 5436 in the name of Jerome Cheese Company

Dear Interested Party:

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

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

Sincerely,

Julie L. Yarbrough

JULIE L. YARBROUGH, Administrative Assistant
Water Allocation Bureau

Enclosure

c: IDWR - Southern

MICROFILMED
JUL 2 5 2000

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JUL 22 1999
Department of Water Resources

William K. Chisholm
19073E Hwy 30
Buhl, Idaho 83316
543-4418
chisholm@micron.net

BEFORE THE
IDAHO DEPARTMENT OF WATER RESOURCES

In the Matter of Application For Transfer Nos. 5401 (Water Right No.X3607337E) Jerome Cheese, Applicant William k. Chisholm Lee J. Halper Protestants	PROTESTANT WILLIAM K. CHISHOLM"S RESPONSE TO HEARING OFFICER'S DENIAL OF CITY OF JEROME'S PETITION TO INTERVENE PROTESTANT CHISHOLM"S SUPPORT OF CITY OF JEROME INTERVENTION
In the Matter of Application For Transfer Nos.5436 Water Right No.35-08606) Jerome Cheese, Applicant William K. Chisholm Lee J. Halper Michael Ihler Darcy Thornborrow Protestants	

If this proceeding is to serve the public interest, then the public must be allowed to participate. The City of Jerome is a key participant in this process. If ever there were a question as to "standing" with regards to this water transfer, the City of Jerome, meets every criteria the Applicant's attorney whines about. They are there as neighbors of Jerome Cheese Co. They have water rights that will be affected by this proposed transfer. They have other interests with regards to Jerome Cheese Co. and the broader public interests of the citizens of the City of Jerome that need to be put on the table. To deny them a seat at that table is to deny them due process and protection under the law.

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Albert Einstein once said, We cannot solve our problems at the same level of thinking at which we created them." Most of our collective problems come from burying our collective heads in the sand. It is imperative that we lay all the cards on the table, that we have a full, honest and open debate on all aspects of this issue and that the Idaho Department of Water Resources then make a wise and prudent water management decision on behalf of the People of Idaho, who through the State of Idaho own the water.

I therefore urge the hearing officer in this matter to reverse himself and give the City of Jerome its rightful place at the table with regard to these water transfers.

Submitted this 20th day of July, 1999

William K. Chisholm
Honorable Protestant

William K. Chisholm
19073E Hwy 30
Buhl, Idaho 83316
543-4418
chisholm@micron.net

BEFORE THE
IDAHO DEPARTMENT OF WATER RESOURCES

In the Matter of Application For Transfer Nos. 5401 (Water Right No.X3607337E) Jerome Cheese, Applicant William k. Chisholm Lee J. Halper Protestants	PROTESTANT WILLIAM K. CHISHOLM"S RESPONSE TO HEARING OFFICER'S CLARIFICATION OF LIMITATION IN DEFINING LOCAL PUBLIC INTEREST AND MOTION TO REVERSE OR DISQUALIFY
In the Matter of Application For Transfer Nos.5436 Water Right No.35-08606) Jerome Cheese, Applicant William K. Chisholm Lee J. Halper Michael Ihler Darcy Thornborrow Protestants	

As one who was active in the Box Canyon wars that brought about the first test of what "local public interest" means, I am outraged that the hearing officer in this case should arbitrarily and capriciously choose without benefit of argument to decide what is and is not in the local public interest.

To come to the conclusion that the industrial dairies which the "cheese factory" helped to spawn and are a growing threat and menace to the public health, safety and general welfare and therefore certainly in the "local public interest" is to deny the pollution from a factory is not a "local public interest" issue. The industrial dairies and the cheese factory are in fact a single industry feeding off

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of each other. The fact that the Applicant refuses to answer his interrogatories with regard to this relationship does not mean it does not exist.

Having said all that, I hereby petition the hearing officer to either reverse his limitation on defining the "local public interest" or disqualify himself for being prejudiced in favor of the Applicant and thus denying me, William K. Chisholm, a Protestant in the matter, the due process guaranteed under the Constitution of the United States and by the State of Idaho.

Submitted this 20th day of July, 1999

William K Chisholm

William K. Chisholm
Honorable Protestant

MICROFILM

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on July 20, 1999 I caused to be served a true and correct copy of the foregoing to each of the persons named below either in person or by the mails of the United States

William K. Chisholm

Christopher H. Meyer, Esq.
Michael C. Creamer,Esq
GIVENS PURSLEY LLP
277 N 6th St, Suite 200
P.O. Box 2720
Boise, Idaho 83701-2720

Mr. Karl J. Dreher
Director IDWR
1301 N ORchard St.
Statehouse Mail
Boise, Idaho 83720-9000

L. Glen Saxton
Hearing Officer
Idaho Dept. of Water Resources
1301 North Orchard St.
Statehouse Mail
Boise, Idaho 83720-9000

Protestans Lee halper
Darcy Thorn borrow
Mike Ihler

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JUL 2 5 2000

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Department of Water Resources

William K. Chisholm
19073E Hwy 30
Buhl, Idaho 83316
543-4418
chisholm@micron.net

BEFORE THE
IDAHO DEPARTMENT OF WATER RESOURCES

In the Matter of Application For Transfer Nos. 5401 (Water Right No.X3607337E) Jerome Cheese, Applicant William k. Chisholm Lee J. Halper Protestants	PROTESTANT WILLIAM K. CHISHOLM"S RESPONSE TO HEARING OFFICER'S DENIAL OF CITY OF JEROME'S PETITION TO INTERVENE PROTESTANT CHISHOLM"S SUPPORT OF CITY OF JEROME INTERVENTION
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JUL 2 6 2000

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I therefore urge the hearing officer in this matter to reverse himself and give the City of Jerome its rightful place at the table with regard to these water transfers.

Submitted this 20th day of July, 1999

William K. Chisholm
Honorable Protestant

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JUL 2 5 2000

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543-4418
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JUL 21 1999
Department of Water Resources

BEFORE THE
IDAHO DEPARTMENT OF WATER RESOURCES

In the Matter of Application For Transfer Nos. 5401 (Water Right No.X3607337E) Jerome Cheese, Applicant William k. Chisholm Lee J. Halper Protestants	PROTESTANT WILLIAM K. CHISHOLM"S RESPONSE TO HEARING OFFICER'S CLARIFICATION OF LIMITATION IN DEFINING LOCAL PUBLIC INTEREST AND MOTION TO REVERSE OR DISQUALIFY
In the Matter of Application For Transfer Nos.5436 Water Right No.35-08606) Jerome Cheese, Applicant William K. Chisholm Lee J. Halper Michael Ihler Darcy Thornborrow Protestants	

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of each other. The fact that the Applicant refuses to answer his interrogatories with regard to this relationship does not mean it does not exist.

Having said all that, I hereby petition the hearing officer to either reverse his limitation on defining the "local public interest" or disqualify himself for being prejudiced in favor of the Applicant and thus denying me, William K. Chisholm, a Protestant in the matter, the due process guaranteed under the Constitution of the United States and by the State of Idaho.

Submitted this 20th day of July, 1999

William K Chisholm

William K. Chisholm
Honorable Protestant

JUL 26 1999

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on July 20, 1999 I caused to be served a true and correct copy of the foregoing to each of the persons named below either in person or by the mails of the United States

William K. Chisholm

Christopher H. Meyer, Esq.
Michael C. Creamer, Esq
GIVENS PURSLEY LLP
277 N 6th St, Suite 200
P.O. Box 2720
Boise, Idaho 83701-2720

Mr. Karl J. Dreher
Director IDWR
1301 N ORchard St.
Statehouse Mail
Boise, Idaho 83720-9000

Protestans Lee halper
Darcy Thorn borrow
Mike Ihler

L. Glen Saxton
Hearing Officer
Idaho Dept. of Water Resources
1301 North Orchard St.
Statehouse Mail
Boise, Idaho 83720-9000

GIVENS PURSLEY LLP

LAW OFFICES
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TELEPHONE: 208 388-1200
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DIRECT DIAL: (208) 388-1247
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Gary G. Allen
Christopher J. Beeson
Michael C. Creamer
Thomas E. Dvorak
Roy Lewis Eiguren
Jeffrey C. Fereday
L. W. Grant III
Richard W. Jankowski
Karl T. Klein
David R. Lombardi
Kimberly D. Maloney
Kenneth R. McClure
Cynthia A. Melillo
Christopher H. Meyer
L. Edward Miller
Patrick J. Miller
Judson B. Montgomery
Angela K. Nelson
W. Hugh O'Riordan
Kenneth L. Pursley
Conley Ward
Stephanie C. Westermeier
Robert B. White
Raymond D. Givens
James A. McClure
OF COUNSEL

July 23, 1999

Mr. L. Glen Saxton
Idaho Department of Water Resources
1301 N. Orchard
Statehouse Mail
Boise, ID 83720-9000

Re: Jerome Cheese; Transfer Nos. 5401 and 5436
Our File No. 5472-1

Dear Mr. Saxton:

Enclosed is Applicant's Response to Motions Filed by Protestants William Chisholm and Lee Halper. Please note that Exhibits A and B have been provided to IDWR through you and to Mr. Halper. Due to the cost of reproduction of the exhibits, which all the Protestants were previously served with, it was determined that it would not be cost productive to provide all the Protestants with duplicate copies of Jerome Cheese's original discovery responses. I can make these available if the Protestants wish to contact my office.

Sincerely,

Michael C. Creamer

Enclosure

cc: William K. Chisholm
Lee J. Halper
Michael Ihler
Darcy Thornborrow

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JUL 2 6 1999

MCC:baf

ORIGINAL

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

BEFORE THE
IDAHO DEPARTMENT OF WATER RESOURCES

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

Jerome Cheese,
Applicant

William K. Chisholm,
Lee J. Halper,
Protestants

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

Jerome Cheese,
Applicant

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

APPLICANT'S RESPONSE TO MOTIONS FILED BY PROTESTANTS WILLIAM CHISHOLM AND LEE HALPER

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Applicant Davisco Foods, International, Inc., dba Jerome Cheese ("Applicant" or "Jerome Cheese"), by and through its attorneys, Givens Pursley, LLP, and responds to the following motions of the Protestants Lee Halper and William Chisholm and as follows:

I. DISCUSSION

A. Halper's Motion in Support of the City of Jerome's Motion to Intervene and/or Motion to File a Late Protest:

Mr. Halper's "motion" supporting the City of Jerome's ("City") Motion to Intervene is untimely. The Hearing Officer already has ruled on the City's Motion to Intervene. If Mr. Halper intended to support the City's efforts to become a party to these proceedings at this late date, his efforts were due before the Hearing Officer's ruling. Once the ruling has been made, the appropriate procedure is to request reconsideration. Inasmuch as Mr. Halper fails to state any additional facts that were unavailable at the time the City filed its Motion, and that would warrant reconsideration, Mr. Halper's Motion in Support should be denied.

The fact that the Department might provide a convenient forum for Mr. Halper to litigate does not overcome the additional fact that the Department has no jurisdiction to resolve issues concerning "wastewater treatment plant contracts, annexation, independent water sources and other disputes." These are largely political questions appropriately determined in other forums. Under Idaho law, the Department, as an agency under the

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executive branch of government, has the primary responsibility to render decisions on water transfers, based on specific statutory criteria. The City's political position on contract renewals or annexation are not among these statutory criteria.

Mr. Halper also is confused or misinformed concerning procedural due process. Due process requires the person be afforded notice and an opportunity for hearing before their substantial rights are affected. These have been given to the City of Jerome. The City failed to timely act on notice properly given. The City has filed its Motion, which was duly considered, albeit denied, by the Hearing Officer. The City has received all the process it was due.

Finally, Mr. Halper's allusions to the integrity of the Department and its employees, and the Mayor of Jerome, lack any support, are offensive and are unworthy of consideration.

B. Halper's Motion to Compel Responses to Discovery, Request for Production of Documents and Interrogatories.

Mr. Halper's Motion to Compel must be denied. Jerome Cheese has responded fully to the Protestants' discovery requests, and supplemented them, consistent with the Department's orders concerning discovery and the rules of procedure. Several of Mr. Halper's discovery requests mirrored those of Protestant William Chisholm. In those instances Jerome Cheese's written responses to Mr. Halper referred him to Jerome Cheese's responses to Mr. Chisholm, which Mr. Halper was also served with. For the

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benefit of the Department, a copy of Jerome Cheese's responses to Mr. Chisholm's discovery requests, exclusive of those documents that were provided to the Department for *in camera* review, are attached as Exhibit A. A copy of Jerome Cheese's responses to Mr. Halper's discovery requests is attached as Exhibit B. These Exhibits demonstrate that Jerome Cheese has responded specifically, and in good faith, to the Protestants' legitimate discovery requests.

The Halper "affidavit" in support of the Motion to Compel is neither verified, acknowledged nor certified. It also does not contain allegations of fact, but rather Mr. Halper's theories and opinions. It is not an affidavit, and does not warrant serious consideration. The Motion to Compel should be denied.

C. Halper Motion to Continue Hearing.

The Motion to Continue Hearing must be denied. The Motion to Continue is founded on Mr. Halper's complaint that he has not been given sufficient information to go forward to rebut Jerome Cheese's proof. Jerome Cheese has responded to all appropriate discovery requests to the best of its ability, as required by the rules of discovery, and consistent with pre-hearing procedural orders. Jerome Cheese is not, however, required to make Mr. Halper's "case" for him. Jerome Cheese's responsibility is to develop and provide the Department with facts sufficient to satisfy the requirements of Idaho Code § 42-222, and to provide responses only to questions properly posed by the Protestants. This it has done. Yet, Mr. Halper avers that "an extension of time will

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allow the Protestant time to gather" information to make its case. That is something he should have been doing over the several months available to him.

Mr. Halper's Motion to Continue is untimely, coming as it does, virtually on the eve of this long-scheduled hearing. Indeed, Mr. Halper has had the additional time since the originally scheduled hearing was first continued to obtain this information on his own, or if he truly believed he was entitled to this information through his discovery requests, to file his Motion to Compel. That he has not made good use of the additional time before the hearing should be to his own prejudice, not Jerome Cheese's.

A continuance of the hearing date will severely prejudice Jerome Cheese. It has invested substantial resources in preparing and prosecuting its Application to this point, and preparing for hearing. Jerome Cheese's employees, counsel, consultants and witnesses all have arranged their other commitments around the July 27 and 28 hearing dates. Mr. Halper can identify no reasons, other than adverse rulings by the Department on his misguided motions and discovery requests, and his own dilatoriness, for his failure to obtain information he deems "necessary to provide proofs, arguments, scientific theorems and trends sufficient to counter Applicant's probable proofs, arguments and scientific theorems and trends." Moreover, each day that the Protestants succeed in delaying Jerome Cheese's Application results in additional operational expenses to it. A primary purpose of the transfers is to eliminate certain existing ongoing costs to Jerome Cheese to acquire water for its plant.

The pre-hearing schedule was agreed to by all parties and no formal objections to that schedule have been lodged by Mr. Halper until now. Having failed to establish any valid basis for continuing the hearing, Mr. Halper's Motion for Continuance should be summarily denied.

D. Halper's Motion to Disqualify Hearing Officer.

Halper's Motion to Disqualify also must be denied. IDAPA 37.01.01.412 (Rule 412) provides disqualification of a designated hearing office for:

> Bias, prejudice, interest, substantial prior involvement in the case other than as a presiding officer, status as an employee of the agency, lack of professional knowledge in the subject matter of the contested case, or any other reason provided by law or for any cause for which a judge is or may be disqualified.

Mr. Halper has failed to assert or establish any facts that would warrant disqualification of the Hearing Officer in this case. It is not sufficient that Mr. Halper cite the Hearing Officer's adverse rulings on his pleadings as a basis for disqualification. Mr. Halper assumed the significant risk in proceeding *pro se* that his pleadings, arguments and theories might fail due to his lack of understanding of legal procedure and precedent. Even parties represented by experienced counsel presenting reasoned arguments must be prepared for an adverse ruling from the trier of fact. Adverse rulings from the Hearing Officer falls far short of bias or prejudice here.

The Hearing Officer is not required to handle *pro se* parties with "kid gloves," or

to help them formulate their legal arguments. Nor is the Hearing Officer entitled to bend the rules for a *pro se* party. The Hearing Officer appropriately advised Mr. Halper of the impropriety of continually engaging in communications with the Hearing Officer through senior Department administrators. Mr. Halper should not be permitted to engage in conduct that would be a violation of the professional rules and Rule 11 of the Rules of Civil Procedure, which members of the bar are required to follow. Mr. Halper's disregard for the long-standing procedures in this respect pose, at the very least, the appearance of impropriety, and at worst, the potential for illicit communications. The Hearing Officer was correct to nip Mr. Halper's improper communications in the bud.

Mr. Halper's allegations concerning "predisposition towards the final decision," "an unhealthy familiarity between the Hearing Officer and the Applicant" and "the possibility of ex parte communications [with Jerome Cheese]" are patently unfounded and false. These allegations are self-serving, without any foundation and verge upon libel.

E. Chisholm's Response to Hearing Officer's Denial of City of Jerome's Petition to Intervene, Protestant Chisholm's Support of City of Jerome Intervention.

Mr. Chisholm's pleading must be dismissed for the same reasons as Mr. Halper's Motion in Support of City of Jerome. It is untimely, since a decision already has been rendered on the City's Motion to Intervene, and Mr. Chisholm provides no new facts that would warrant reconsideration of the Order denying intervention. The City waived its

right to participate after having received notice of the pending transfers. Mr. Chisholm is not in a position to rescind that waiver for the City, nor is it appropriate for Mr. Chisholm to seek to assert the City's due process rights. The City is represented by able counsel, it received ample notice of the transfers, and it had opportunities to protest them. The City must bear the responsibility for its inaction. Mr. Chisholm's request that the Hearing Officer reverse his decision denying the City's intervention should be dismissed.

F. Chisholm's Response to Hearing Officer's Clarification of Limitation in Defining Local Public Interest and Motion to Reverse or Disqualify.

Mr. Chisholm fails to state any legitimate grounds for the Hearing Officer to reverse his decision concerning the scope of the Department's consideration of the local public interest in these proceedings. Mr. Chisholm also has not alleged *any* basis by which the Hearing Officer could or should be disqualified from hearing these matters. Mr. Chisholm's standard for disqualification could best be summarized simply as "I am entitled to a Hearing Officer who agrees with my theory of the law." If that were the true standard, then every proceeding would produce at least one party who was entitled to disqualification of the decision maker. Fortunately that is not the standard. Mr. Chisholm's Motion to Reverse or Disqualify should be summarily denied.

II. CONCLUSION

The Protestants' most recent pleadings are simply an attempt to delay the proceedings, for no purpose other than to impose delay and further expense on Jerome Cheese. The Protestants apparently have suddenly realized that they really must come

forward and present a case next week, and that they cannot simply file a Protest and rely on someone else, such as the City (or the Applicant), to make their case for them. Granting a continuance of the hearing will simply allow the Protestants to procrastinate all that much longer, and will encourage them to file more motions. Jerome Cheese is prepared now to go to hearing as scheduled, and has invested an inordinate amount of time and money doing so in the face of the Protestants' consistent vexatious pleadings. The Protestants' barrage of motions, "affidavits" and responses should be dismissed.

Dated this 23rd day of July, 1999.

GIVENS PURSLEY LLP

By _____
Michael C. Creamer

Attorneys for Applicant
Jerome Cheese

CERTIFICATE OF SERVICE

I hereby certify that on July 23, 1999 I caused to be served a true and correct copy of the foregoing to each of the persons named below by the method indicated below each of their names.

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

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

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

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

Allen D. Merritt, P.E.
Idaho Department of Water Resources
1341 Fillmore St., Ste. 200
Twin Falls, ID 83301-3380
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Statehouse Mail
Boise, ID 83720-9000
☐US Mail ☐Email ☐Fax ☑Hand ☐Overnight

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

Michael C. Creamer

MICROFILMED
JUL 2 5 2000

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JUL 2 1 1999
Department of Water Resources

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

BEFORE THE DIRECTOR
IDAHO DEPARTMENT OF WATER RESOURCES

In the Matter of Application of Jerome Cheese Company for Water Rights Transfers 5401 and 5436 Lee Halper, Protestant Jerome Cheese Company, Applicant	))))	Motion in Support of the City of Jerome's Motion to Intervene and/or Motion to File a Late Protest

Comes now Protestant Lee Halper and files a Motion in Support of the City of Jerome in their attempt to Intervene and become a Protestant in this matter.

I state categorically that the addition of the City of Jerome can only be a benefit to this Protest hearing in that the citizens of Jerome and potential citizens of Jerome are stakeholders in the outcome. It would be against the Public Interest and the civil rights of all citizens of the whole County of Jerome for the City of Jerome to not be represented at this Hearing. The issues of wastewater treatment plant contracts, annexation, independent water sources and other disputes are better and more cheaply solved in the much less cumbersome arena of an I.D.W.R. hearing now, rather than in Court later. To exclude the City of Jerome from this Hearing would be a denial of due process and an acceptance that possible illegal or self-serving collusionary actions on the part of the Mayor of Jerome, who has an open conflict of interest, and would also taint the Department's integrity. This Hearing is a part of the greater Democratic process guaranteed by the Constitution's guarantee of free speech and any attempt to subdue or quash a citizen's participation in a public process speaks of Totalitarianism. The City's Motion for Reconsideration of July16th has reasons enough to allow them Protestant status and should be enough for any Public minded Bureaucrat.

For these and other reasons quite obvious to me, I request that the City of Jerome be given full and equal status as a Protestant.

Dated this 19th day of July, 1999

Lee Halper-Protestant

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Department of Water Resources

Lee J. Halper
331 S. 230 W.
Jerome, ID 83338

BEFORE THE DIRECTOR
IDAHO DEPARTMENT OF WATER RESOURCES

In the Matter of Application of Jerome Cheese Company for Water Rights Transfers 5401 and 5436 Lee Halper, Protestant Jerome Cheese Company, Applicant	)))))	Motion to Compel Response to Discovery, Request for Production of Documents and Interrogatories

Comes now Protestant Lee Halper and files a Motion to Compel Jerome Cheese Company to fully respond to Discovery, Produce Documents requested and fully answer Interrogatories. Accompanying Affidavit provides supporting reasons.

I respectfully request a Hearing date on this matter be set as soon as possible.

Dated this 19th day of July, 1999

Lee Halper

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JUL 26 2000

Lee J. Halper
331 S. 230 W.
Jerome, ID 83338

BEFORE THE DIRECTOR
IDAHO DEPARTMENT OF WATER RESOURCES

In the Matter of Application of Jerome Cheese Company for Water Rights Transfers 5401 and 5436 Lee Halper, Protestant Jerome Cheese Company, Applicant	)))))	Affidavit in Support of Motion to Compel

Comes now Protestant Lee Halper and offers proof and reasoning why Applicant should be compelled to fully answer Discovery, provide documents and answer Interrogatories completely and truthfully.

Initial Discovery for the hearing set for June 8th on Transfer 5401 was Ordered by the Hearing Officer to be completed by June 1st. Applicant did not meet that deadline and offered the reasoning that civil procedure's time lines applied. Clearly, this did not apply as evidenced in the Hearing Officer's Order for Discovery deadline. If the Applicant's time line had been followed, they would have been allowed to complete Discovery AFTER the hearing. Surely, the Hearing Officer would not have wanted this to occur, thus his order to complete Discovery 7 days before the Hearing on June 8. The Applicant then used an additional ten plus days to complete Discovery after the Hearings were consolidated and then claimed that to answer or supply documents was too burdensome. Without full disclosure on the part of the Applicant, whose duty is one of burden of proof, Protestant has been supplied no information. Since the rule is not whether or not the evidence gathered is admissible, but whether or not it would lead to evidence that is admissible, Protestant should be supplied full and complete answers and documents.. Applicant has an obligation to answer these questions and had sufficient time and resources to accomplish this. Attached Exhibit A, Responses to Chisholm's and Halper's First Discovery's as proof of Applicant's devotion to playing only by their rules and not by the rules that govern everybody else. No supplemental information has been supplied or is forthcoming, as promised in their answers which shows total disregard for this contractual agreement willingly supplied on their own in their Discovery answers.

For these and other reasons, I respectfully request that the Applicant be compelled and Ordered to fully answer Discovery.

Dated this 19th day of July, 1999

Lee Halper

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EXHIBIT A

Applicant's Responses to Chisholm's
and Halper's First Discovery

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JUL 25 2000

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

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

BEFORE THE
IDAHO DEPARTMENT OF WATER RESOURCES

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

Jerome Cheese,
Applicant

William K. Chisholm,
Lee J. Halper,
Protestants

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

Jerome Cheese,
Applicant

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

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

MICROFILMED
JUL 26 2000

Comes now Applicant Davisco Foods International, Inc., dba Jerome Cheese, by and through its undersigned counsel, and in response to *Bill Chisholm's First Set of Interrogatories And Requests For Production of Documents Directed to Jerome Cheese Co.* states as follows.

GENERAL OBJECTION: The interrogatories and all of their subparts constitute over forty questions in violation of the Idaho Rules of Civil Procedure. Notwithstanding such objection and without waiving same, Applicant responds as set out below.

RIGHT TO SUPPLEMENT: Jerome Cheese has responded as fully as practicable to these discovery requests. It reserves the right to supplement these responses as additional material and information is discovered or becomes available.

SERVICE: In anticipation of the informal consolidation of Transfer Nos. 5401 and 5436, these responses are being served on all four Protestants involved in both transfers.

RESERVATION OF RIGHTS: None of these responses or documents produced constitute a waiver by Jerome Cheese of any objection to their admission.

INTERROGATORY NO. 1: Please identify each person known to you or to your attorneys who has or may have knowledge of any fact pertinent or relevant as to your proposed Water Transfer Application No. 5401. In your answer to this interrogatory, please include any person who has been retained, hired or relied upon by you, your agents or representatives to review and issues raised by the Application. In your answer, please provide the full name, mailing address, physical address and phone number of each person identified.

RESPONSE TO INTERROGATORY NO. 1:

The Applicant objects to this interrogatory as being over broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence in that it requests, without limitation, the identification of every person with knowledge of the application. Notwithstanding such objections and without waiving same, the Applicant states as follows. The following persons may have knowledge of facts pertinent or relevant to the proposed transfer:

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Lee Gleasemann, E.L.T
Scott McClure
McClure Engineering
P.O. Box 1404
Twin Falls, ID 83303

Brian Reed, E.I.T
Staff Engineer
Division of Environmental Quality
601 Pole Line Road, Ste. 2
Twin Falls, ID 83301-3035
Office: 208-736-2190

Charles E. Brockway, Ph.D., P.E.
Charles G. Brockway, Ph.D., P.E.
Brockway Engineering, P.L.L.C.
2016 Washington Street North, Ste. #4
Twin Falls, ID 83301
Office: 208-736-8543

Mr. William K. Chisholm
19073 E. Hwy. 30
Buhl, ID 83316
Home: 208-543-4418

Michael C. Creamer, Esq.
Givens Pursley LLP
277 N. 6th St., Ste. 200
P.O. Box 2720
Boise, ID 83701
Office: 388-1247

Mr. Jon Davis
General Manager
Jerome Cheese
47 West 100 South
P.O. Box 485
Jerome, ID 83338
Office: 208-324-8806

Mr. Bill Riebesell
Plant Superintendent
Jerome Cheese
47 West 100 South
P.O. Box 485
Jerome, ID 83338
Office: 208-324-8806

Mr. Karl J. Dreher
Director
Idaho Department of Water Resources
1301 N. Orchard St.
Statehouse Mail
Boise, ID 83720-9000
Office: 327-7920

Mr. Gary Funderburg
Idaho Department of Water Resources
1341 Fillmore St., Ste. 200
Twin Falls, ID 83301-3380
Office: 208-736-3033

Mr. Lee J. Halper
331 South 230 West
Jerome, ID 83338
Home: 208-324-2240

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The Honorable Dennis Moore
Mayor of the City of Jerome
152 East Avenue A
Jerome, ID 83338
Office: 208-324-8189

Craig D. Hobdey, Esq.
Hobdey & Hobdey
125 Fifth Ave. W.
P.O. Box 176
Gooding, ID 83330-0176
Office: 208-934-4429

Paul K. Hunter, P.G.
Project Hydrogeologist
EnviroSearch International
1605 N. 13th St.
Boise, ID 83702
Office: 345-8292

Mr. Michael Ihler
2635-A East 3100 North
Twin Falls, ID 83301
Home: 208-734-7930

Mr. Scott L. Bybee,
J-U-B Engineers, Inc.
800 Falls Avenue
Twin Falls, ID 83301-3366
Office: 208-733-2414

Dr. Richard K. Kelsey
Senior Vice President
EnviroSearch International
1605 N. 13th St.
Boise, ID 83702
Office: 345-8292

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MAR 23 2000

Allen D. Merritt, P.E.
Southern Regional Manager
Idaho Department of Water Resources
1341 Fillmore St., Ste. 200
Twin Falls, ID 83301-3380
Office: 208-736-3033

Christopher H. Meyer, Esq.
Givens Pursley LLP
277 N. 6th Street, Ste. 200
P.O. Box 2720
Boise, ID 83701-2720
Office: 208-388-1236

Mr. J. Rex Minchey
Maintenance Manager
Jerome Cheese
47 West 100 South
P.O. Box 485
Jerome, ID 83338
Office: 208-324-8806

Senator John A. Sandy
3104 South 1200 East
Hagerman, ID 83332
(Vendor of water right, Transfer No. 5401)

Mr. Lewis Eilers
Executive Director
Idaho Dairymen's Association
890 Shoshone St. East
Twin Falls. ID 83301
Office: 208-736-1953

Mr. Roy Hincks
2851 W. 900 S.
Sterling, ID 83210
Home: 208-328-2440
(Vendor of water right. Transfer No. 5436)

Mr. L. Glen Saxton
Idaho Department of Water Resources
1301 N. Orchard
Statehouse Mail
Boise, ID 83720-9000
Office: 208-327-7955

Mr. James E. Stanton
Sr. Water Resource Agent
Idaho Department of Water Resources
1341 Fillmore St., Ste. 200
Twin Falls, ID 83301-3380
Office: 208-736-3033

Darcy Thornborrow
1676 East 3800 North
Buhl, ID 83316
Home: 208-543-5030

Mr. Charles H. Correll
City Councilman
City of Jerome
152 East A.
Jerome, ID 83338
Office: 208-324-8189

Mr. Ralph Peters
City Councilman
City of Jerome
152 East A.
Jerome, ID 83338
Office: 208-324-8189

Ms. Marjorie Schmidt
City Councilwoman
City of Jerome
152 East A.
Jerome, Id 83338
Office: 208-324-8189

Mr. Joe Skaug
City Councilman
City of Jerome
152 East A.
Jerome, ID 83338
Office: 208-324-8189

Each of the County Commissioners
of Jerome County

Various unknown staff
of the Idaho Division of Environmental Quality

Various unknown staff
of the Idaho Department of Agriculture

INTERROGATORY NO. 2: Please state each and every theory, claim, fact, supposition, scientific study, research or defense upon which you rely as a basis for your claim that this transfer is in compliance with the requirements as stated in Idaho Code 42-222.

ANSWER TO INTERROGATORY NO. 2: The Applicant objects to this interrogatory as being over broad and unduly burdensome in that it may be read to call for an articulation of the Applicant's entire presentation at the upcoming hearing. Moreover, the scope of issues to be heard has not yet been established by the Department. In addition the Protestants have provided to date minimal information—not to mention evasive, unresponsive and entirely unsatisfactory discovery responses—describing the nature and basis of their protests. The question also calls for speculation in that it requests identification at this time of theories, facts, etc. which will respond to and rebut issues and arguments which the Protestants' have not yet articulated. The Applicant will do its best at the hearing to respond to issues raised at that time, but it cannot be expected to anticipate them here and respond in advance. In addition, the Applicant objects on the grounds that the interrogatory calls for information protected by the attorney/client privilege and the attorney work product rule. Notwithstanding such objections and without waiving same, the Applicant states as follows:

The proposed water right transfer complies with the requirements of Idaho Code § 222(1), to wit: "The director of the department of water resources shall examine all the evidence and available information and shall approve the change in whole, or in part, or

upon conditions, provided no other water rights are injured thereby, the change does not constitute an enlargement in use of the original right, the change is consistent with the conservation of water resources within the state of Idaho and is in the local public interest as defined in section 42-203A(5), Idaho Code, and the new use is a beneficial use ...."

With respect to injury, the Applicant will show that the transfer will not result in any increase in the net depletion of the water. The Applicant will show that the former place of use will no longer be served by the part of the water right transferred. The Applicant will show that only the consumptive use portion of the water right is sought to be transferred. The Applicant will also show that the new points of diversion will draw on the same aquifer as the previous points of diversion. The Applicant will show that the new points of diversion will not result in interference with other water rights. The Applicant will show that the change in season and type of use will have no adverse impact on any water user.

With respect to enlargement, the Applicant will show that the proposed change will not result in any greater diversion rate, diversion volume, application, or consumptive use than before the change. In addition, the Applicant's issues on injury overlap with and will respond to the "no enlargement" requirement. See description of water rights attached hereto.

With respect to conservation, the Applicant will show that the proposed use of the water right is consistent with the Prior Appropriation Doctrine, including requirements of beneficial use and the concept of duty of water. The Applicant will further show that it has employed state-of-the art water conservation practices.

With respect to the local public interest, the Applicant will show that the transfer will not adversely affect water resources, the environment, or the economy, and that the proposed water use provides jobs, enhances the community and regional economy, and does not contribute to environmental degradation. The Applicant contends that the local public interest test is not intended to authorize the Idaho Department of Water Resources to look beyond these issues, and does not authorize the Department to evaluate the secondary and tertiary impacts of the Jerome Cheese on the Protestants' preferred life style, and specifically does not authorize the Department to evaluate the impacts of dairy production which Jerome Cheese does not own or control. Nor does the local public interest test authorize the Department to dictate whether a particular beneficial water use is better than another beneficial water use. Nor does the local public interest test authorize the Department to dictate whether the Applicant should select one water supply over another water supply. Nor does the local public interest test authorize the

Department to consider individual competitive effects of particular water transfers.

The Applicant contends that the Protestants do not have standing to raise any issues with respect to injury or enlargement, and have only limited standing with respect to conservation and local public interest, because they do not own any water rights which could be impacted by the proposed transfer.

INTERROGATORY NO. 3: Please identify every document of which you are aware that supports or tends to support your answer to Interrogatory No. 2 above.

ANSWER TO INTERROGATORY NO. 3: The Applicant renews and incorporates here each of its objections made in response to Interrogatory No. 2 above. Notwithstanding such objections and without waiving same, the Applicant states as follows:

The application is supported by the statements set out in the application filed by the Applicant in this matter, and by each of the pleadings, correspondence, and documents filed with the Department in this matter. It is also supported by the documents which are produced herewith.

INTERROGATORY NO. 4: Please identify all employees, suppliers or investors, of Jerome Cheese Co. who hold public office, or sit on any board that may have regulatory authority over any aspect of Jerome Cheese's operations, or whose relatives hold such positions of authority. In your answer, please provide the names, addresses and telephone numbers, payscale, job description, length of employment, shift position, office held, type of supplier, amount of investment.

ANSWER TO INTERROGATORY NO. 4: The Applicant objects to this interrogatory as being over broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Neither the ownership of Jerome Cheese, nor any suggestion of impropriety, was identified as an issue in this contested case by the Protestants in their protest or at the pre-hearing conference. Notwithstanding such objections and without waiving same, the Applicant states as follows:

To the best of the company's knowledge, no employee, supplier of or investor in Jerome Cheese, nor any relative thereof, holds any public office or sits on any board that may have regulatory authority over any aspect of Jerome Cheese's operations with the exception of the following:

Mr. Dennis Moore has been employed at Jerome Cheese for over three years in yard maintenance with a flexible shift. He also serves as Mayor of the City of Jerome.

Mr. David Moore has been employed at Jerome Cheese for over six years as an operator on the day shift. He is the son of Dennis Moore.

Neither person is in a position of management or similar authority at Jerome Cheese.

Jerome Cheese declines to provide their home addresses and telephone numbers on privacy grounds.

INTERROGATORY NO. 5: Please identify all owners, investors, partners, banks lienholders, mortgage companies, insurance companies or other people or parties who have a financial interest in Jerome Cheese and any of its affiliated subsidiaries, parent companies or other related business affiliations. In your answer, please specify the exact financial relationship for each party identified, including their positions, if any on the board, as employees, as stockholders, suppliers, or policy empowered shareholders, their names, their agents or representatives names, addresses, telephone numbers and place of employment.

ANSWER TO INTERROGATORY NO. 5: The Applicant objects to this interrogatory as being over broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. The Protestants have raised no issue in their protests or in the pre-hearing conference which has any bearing whatsoever on the information sought by this interrogatory. Moreover, finding, generating, collecting, or presenting the information would be difficult and unduly burdensome on the Applicant. Finally, the Applicant contends that disclosure of the financial information sought by this interrogatory would disclose confidential business information putting the Applicant at a competitive disadvantage. Notwithstanding such objections and without waiving same, the Applicant states as follows:

Davisco Foods International, Inc. dba Jerome Cheese is a closely held corporation incorporated in the State of Minnesota. It is wholly owned by Mark Davis and other family members.

Mark Davis, President
Davisco Foods International, Inc.
620 North Main Street
Le Suer, Minnesota 56058
Office: 507-665-8811

The family member and owner residing in Idaho is Jon Davis, identified above.

INTERROGATORY NO. 6: Please list all the dairies which supply milk to your business. In your answer, please include the name of the dairy, the name of the owner and manager of the dairy, the address, phone number and legal description of the dairy, the average yearly gallons or pounds of milk supplied by that dairy, the contractual arrangement with the dairy, the base price formula paid to the dairy, the milk transportation costs charged to the dairy if any, and the average yearly reimbursement paid to the dairy for the product supplied and all knowledge you have or can easily determine and supply as to the number of milking cows at each of there [sic] dairies. Also any documentation that speaks to the size of dairies.

ANSWER TO INTERROGATORY NO. 6: The Applicant objects to this interrogatory as being over broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. The Protestants have failed to articulate any particular basis for opposition to the proposed water right transfer. To the extent that Protestants may contend that suppliers of milk to Jerome Cheese are harming the environment or otherwise not in the local public interest, such issues are beyond the scope of the local public interest test, irrelevant, and inadmissible. Moreover, finding, generating collecting, or presenting the information would be difficult and unduly burdensome on the Applicant. Finally, the Applicant contends that disclosure of the financial, contractual and business practice information sought by this interrogatory would disclose confidential business information putting the Applicant at a competitive disadvantage. Notwithstanding such objections and without waiving same, the Applicant states as follows:

Jerome Cheese purchases milk products from a variety of suppliers throughout the Magic Valley. All milk contracts are verbal. Each contract contains a provision requiring strict compliance with applicable environmental and health regulations, and provides financial penalties for violations.

INTERROGATORY NO. 7: Please verify whether Jerome Cheese's Memorandum of Agreement of 12/16/98 with John Sandy for the purchase of 33 inches of water has been extended past the 120 day deadline noted therein and an and [sic]

extension agreement available by mutual consent contained therein been drafted and agreed to. Include in your answer, the persons or departments referred to in Section No. 5 and all documents or evidence obtained to determine this finding.

ANSWER TO INTERROGATORY NO. 7: The referenced contract was extended by a subsequent agreement. A second extension has been proposed. See documents produced herewith. For the convenience of the parties, we are also producing herewith proposed and final contract documents regarding the water right in Transfer No. 5436.

INTERROGATORY NO. 8: On page 2 of your Application to the Department for this transfer under the category "Remarks", you state "Process generates more waste water than what is brought into the plant." Please specify the source of the water that comes into your plant, the daily amount brought in and the daily amount processed out.

ANSWER TO INTERROGATORY NO. 8: Water is a by-product of cheese production. In other words, the extra water comes from the milk brought into the plant, which water is extracted during the cheese production process. Prior to disposal, the extracted water is used and reused numerous times during the production process pursuant to a state-of-the art recycling program. Jerome Cheese objects to the release of statistics regarding milk production on the ground that such information is confidential business information whose release would disadvantage the company. Moreover, Jerome Cheese is claiming no water right in this proceeding in connection with water it extracts from milk. Consequently, quantification of such volumes is unnecessary, burdensome, and irrelevant to this case.

INTERROGATORY NO. 9: Please state the exact reason or reasons for this water transfer. In your answer, delineate all possible scenarios of use, expanded use, future transfer of use, sale, hold for sale, or other possible.

ANSWER TO INTERROGATORY NO. 9: In response to the first question contained within Interrogatory No. 9, the reason the Applicant has filed for this water right transfer is to secure a viable, permanent, reliable, controllable, cost-effective, clean and independent source of water for its industrial use. In response to the second question, the Applicant objects that the question calls for speculation regarding unknown future scenarios. Notwithstanding such objections and without waiving same, the Applicants states:

No water is added to the cheese in the cheese making process. The Applicant uses water within the plant primarily for industrial cleaning purposes. A small amount of water is used for "domestic" purposes within the plant, such as drinking water, toilets,

sinks, showers, washing up and safety facilities, and the like. In addition, some water is used for industrial irrigation of lawns, etc. on the grounds. This description is provided for illustrative purposes, and is not intended to be exclusive or restrictive.

INTERROGATORY NO. 10: Was the establishment of Jerome Cheese Co. the result of recruitment to Jerome County, Idaho by city, county, or state economic development agencies? If so what were the names of such agencies, the name and principal agents or officials involved. If there were enticements in such recruitment, list the type and economic value of any such enticements.

ANSWER TO INTERROGATORY NO. 10: The Applicant objects to this interrogatory as being over broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. The Protestants have failed to articulate any particular basis for opposition to the proposed water right transfer, and have said nothing in their pleadings or at the prehearing conference which remotely suggests any impropriety or other issue bearing on any incentives which may or may not have been offered to Jerome Cheese. To the extent that Protestants may choose to make an issue of any financial or other incentives which may have been offered to Jerome Cheese in connection with the location of its plant, the Applicant contends that such issues are beyond the scope of the local public interest test, irrelevant, and inadmissible. Moreover, finding, generating, collecting, or presenting records relating to the location of the plant would be difficult and unduly burdensome on the Applicant. Finally, the Applicant contends that disclosure of the information sought by this interrogatory would disclose confidential business information putting the Applicant at a competitive disadvantage. Notwithstanding such objections and without waiving same, the Applicant states as follows:

Prior to locating its current facility in Jerome, Jerome Cheese engaged in discussions with officials of the City of Jerome, Jerome County, and the State of Idaho in which a variety of issues were discussed, including services, taxation, land use and regulatory matters. Jerome Cheese was satisfied with those discussions, and relied upon them in making its decision to locate in Jerome. No special treatment was sought or received, nor was any written agreement entered into with any governmental body providing for incentives or other benefits in connection with the location of Jerome Cheese in Idaho.

INTERROGATORY NO. 11: Supply any and all documents, contracts and agreements that pertain to Interrogatory number 10.

ANSWER TO INTERROGATORY NO. 11: The Applicant incorporates here all

objections made with respect to Interrogatory No. 10.

REQUEST FOR PRODUCTION NO. 1: Please produce each document described or identified or relied upon by you in your response any of the above Interrogatories 1 thru 11.

RESPONSE TO REQUEST FOR PRODUCTION NO. 1: The Applicant incorporates here each and every objection made above to Interrogatory Nos. 1 through 11. Notwithstanding such objections and without waiving same, Applicant is producing the documents identified on the List of Documents Produced, attached as exhibits hereto. Certain of these documents are being withheld pending resolution of Applicant's Motion in Limine and Motion for Protective Order which will be filed separately. All documents not being produced are clearly identified as such, and are being produced to the Hearing Officer on a confidential basis for "in camera" inspection pursuant to said motions.

Dated this 7th day of June, 1999.

GIVENS PURSLEY LLP

By _____
Christopher H. Meyer

Attorneys for Applicant
Jerome Cheese

VERIFICATION

J. Rex Minchey, acting under authority of and on behalf of Jerome Cheese, being first duly sworn upon oath, deposes and says:

Jerome Cheese is the Applicant in the above-captioned matter. I serve as Maintenance Manager for Jerome Cheese and am authorized by Jerome Cheese to respond to all discovery in this matter on behalf of Jerome Cheese. I have read the foregoing requests and responses. The statements contained therein are true to the best of my knowledge and belief.

Dated: June 8, 1999

J. Rex Minchey
Maintenance Manager
Jerome Cheese

STATE OF IDAHO)
) ss.
COUNTY OF JEROME)

On this 8 day of June, 1999, before me, a Notary Public, personally appeared J. Rex Minchey, known or identified to me to be the Maintenance Manager of Jerome Cheese, whose name is subscribed to the foregoing instrument on behalf of said corporation, and acknowledged to me that s/he is authorized to and did execute the same on behalf of said corporation.

NOTARY PUBLIC for Idaho
Residing at Jerome, Jerome County, Idaho
My commission expires: 3/13/2003

LIST OF DOCUMENTS PRODUCED

1. Proposed First Addendum to Agreement with Roy Hincks (w/attachments)
2. Proposed Second Addendum to Agreement with John Sandy (w/attachments)
3. Correspondence with Craig Hobdey and Roy Hincks re water agreements (Hobdey, Dec. 17, 1998, April 16, 1999, May 7, 1999, June 5, 1999) (Hincks, June 5, 1999)
4. Memo of June 6, 1999 from CHM to Consultants
5. Appendix D — Standards for Water Sources
6. Letter from Chuck Brockway to DEQ (May 4, 1999)
7. Project Manual—Technical Specifications for New Well Installation
8. Well Driller's Report
9. Map of Jerome Area
10. Fax from Magic Valley Maid with pump drawings
11. Letter from Chuck Brockway to IDWR (May 5, 1999)
12. Map and Well Driller's Reports
13. Brockway notes
14. Letter from Chuck Brockway to Scott McClure (March 31, 1999)
15. Letter from Dennis Moore to IDWR (May 28, 1999)
16. Letter from Con P. Paulos to IDWR (June 4, 1999)

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LIST OF DOCUMENTS SUBJECT TO IN CAMERA INSPECTION[1]

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

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

CERTIFICATE OF SERVICE

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

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

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

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

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

Christopher H. Meyer

EXHIBIT B

Responses to Halper's First Discovery

MICROFILM
JUL 25 2000

COPY

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BEFORE THE
IDAHO DEPARTMENT OF WATER RESOURCES

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

Jerome Cheese,
Applicant

William K. Chisholm,
Lee J. Halper,
Protestants

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

Jerome Cheese,
Applicant

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

APPLICANT JEROME CHEESE 'S RESPONSE TO LEE HALPER'S FIRST SET OF INTERROGATORIES, REQUESTS FOR ADMISSION, AND REQUESTS FOR PRODUCTION OF DOCUMENTS

Comes now Applicant Davisco Foods International, Inc., dba Jerome Cheese, by and through its undersigned counsel, and in response to *Lee Halper's First Set of Interrogatories, Requests for Admissions, and Requests For Production of Documents Directed to Jerome Cheese Company* states as follows.

GENERAL OBJECTION: The interrogatories and all of their subparts constitute over forty questions in violation of the Idaho Rules of Civil Procedure. Notwithstanding such objection and without waiving same, Applicant responds as set out below.

RIGHT TO SUPPLEMENT: Jerome Cheese has responded as fully as practicable to these discovery requests. It reserves the right to supplement these responses as additional material and information is discovered or becomes available.

SERVICE: In light of the informal consolidation of Transfer Nos. 5401 and 5436, these responses are being served on all four Protestants involved in both transfers.

RESERVATION OF RIGHTS: None of these responses or documents produced constitute a waiver by Jerome Cheese of any objection to their admission.

Item 1 (Interrogatory No.1)

Please identify yourself (the person or persons responding to these discovery requests), and identify each and every person with whom you consulted in preparing these responses.

ANSWER:

These responses were prepared by J. Rex Minchey with the assistance of undersigned counsel. In preparing these responses, Mr. Minchey and undersigned counsel consulted with Jon Davis of Jerome Cheese, Michael C. Creamer of Givens Pursley LLP, Charles E. Brockway of Brockway Engineering, and Paul K. Hunter of EnviroSearch International.

Item 2 (Interrogatory No. 2)

Please state whether you have read and understood the instructions and

introductory materials provided above.

ANSWER:

Yes

Item 3 (Interrogatory No. 3)

Please identify each person known to you or to your attorneys who has or may have knowledge of any fact pertinent or relevant as to your proposed Water Transfer Application No. 5401. In your answer to this Interrogatory, please include any person who has been retained, hired or relied upon by you, your agents or representatives to review any issues raised by the Application. In your answer, please provide the full name, mailing address, physical address and phone number of each person identified.

ANSWER:

Please see responses Responses to *Bill Chisholm's First Set of Interrogatories And Requests For Production of Documents Directed to Jerome Cheese Co.* (hereinafter "First Chisholm Discovery").

Item 4 (Interrogatory No. 4)

Please state each and every theory, claim, fact, supposition, scientific study, research or defense upon which you rely as a basis for your claim that this Transfer is in compliance with the requirements as stated in Idaho Code 42-222.

ANSWER:

Please see responses to First Chisholm Discovery.

Item 5 (Request for Production No.1)

Please identify every document of which you are aware that supports or tends to support your answer to Interrogatory 2 above.

ANSWER:

Please see responses to First Chisholm Discovery.

Item 6 (Interrogatory No. 6)

Please identify all employees, full and part-time, of Jerome Cheese Company. In your answer, please provide their addresses, pay scale, job description, length of employment, and shift position. Please include all subcontractors and people and companies hired temporarily and/or providing an ongoing service, their names, addresses, telephone numbers and describe the services performed, pay issued and dates and times of service related to this question. In addition, please list the starting wage and benefit package for a new employee with no experience for each department and/or job description.

ANSWER:

Please see responses to First Chisholm Discovery.

Item 7 (Interrogatory No. 7)

Please identify all owners, investors, partners, banks, lienholders, mortgage companies, insurance companies or other people or parties who have a financial interest in Jerome Cheese Company and any of its affiliated subsidiaries, parent companies or other related business affiliations. In your answer, please specify that exact financial relationship for each party identified, including their positions, if any, on the board, as employees, as stockholders, or policy empowered shareholders, their names, their agents' or representatives names, addresses, telephone numbers and place of employment.

ANSWER:

Please see responses to First Chisholm Discovery.

Item 8 (Interrogatory No. 8)

Please list all dairies by which you are supplied milk for your business. In your answer, please include the name of the dairy, the name of the owner and manager of the dairy, the address, phone number and legal description of the dairy, the average yearly gallons or pounds of milk supplied by that dairy, the contractual arrangement with the dairy, the base price formula paid to the dairy, the milk transportation costs charged to

the dairy, if any, and the average yearly reimbursement paid to the dairy for the product supplied, and all knowledge you have or can easily determine and supply as to the number of milking cows at each of these dairies.

ANSWER:

Please see responses to First Chisholm Discovery.

Item 9 (Interrogatory No. 9)

Please supply the names, addresses and telephone numbers of all people, companies, corporations or other entities to whom you supply and/or sell your cheese to. In your answer, please provide the contractual agreement with these entities, final destination address of shipment for end use of product sold, and the average yearly pounds of cheese shipped to each entity and the average yearly amount of reimbursement you receive for these shipments previously listed.

ANSWER:

Objection. This interrogatory is over broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. The Protestants have raised no issue in their protests or in the pre-hearing conference which has any bearing whatsoever on the information sought by this interrogatory. Moreover, finding, generating, collecting, or presenting the information would be difficult and unduly burdensome on the Applicant. Finally, the Applicant contends that disclosure of the financial and business information sought by this interrogatory would disclose confidential business information putting the Applicant at a competitive disadvantage.

Item 10 (Interrogatory No. 10)

Please verify whether Jerome Cheese's Memorandum of Agreement of 12\16\98 with John Sandy for the purchase of 33 inches of water has been extended past the 120 day deadline noted therein and an extension agreement available by mutual consent contained therein been drafted and agreed to. Include in your answer, the persons or departments referred to in Section No. 5 and all documents or evidence obtained to determine this finding.

ANSWER:

Please see responses to First Chisholm Discovery.

Item 11 (Interrogatory No. 11)

On page 2 of your Application to the Department for this transfer under the category 'Remarks', you state "Process generates more wastewater than what is brought into the plant." Please specify the source of the wastewater that comes into your plant, the daily amount brought in and the daily amount processed out.

ANSWER:

Please see responses to First Chisholm Discovery.

Item 12 (Interrogatory No. 12)

Please state the exact reason or reasons for this water transfer. In your answer, delineate all possible and addressed scenarios of use, expanded use, future transfer of use, sale, hold for sale, cessation of present water supply agreements or other possibilities.

ANSWER:

Please see responses to First Chisholm Discovery.

Item 13 (Interrogatory No. 13)

Please provide an accounting of all water used and generated in the operation of the facility. In your answer, include all inputs, outputs and exported water, water used for manufactured product, water used for cleaning and sanitation, et cetera. This accounting should provide a detailed water usage summary and budget for past years and a forecast on future water use. Include a description of all water and wastewater measurement devices and methods or procedures used to monitor these devices. Please include all documents relating to the water and wastewater measurement devices. In your answer, please provide water conservation measures you have implemented for the last 5 years.

ANSWER:

The information sought by this interrogatory is not available. To the extent that such information is generated during the course of preparation for the upcoming hearing, it will be produced.

Item 14 (Interrogatory No. 14)

Please provide a detailed history of your association with regards to your locating your business in Idaho. In your answer, include all people, groups, associations, cities, counties, entities with which you interacted from the time you first considered the possibility of locating in Idaho to the present. Please include all understandings, agreements, verbal contracts, and oral arrangements that passed between your Company and each of these people.

ANSWER:

Please see responses to First Chisholm Discovery.

Item 15 (Interrogatory No. 15)

Please provide a water budget for the whole water right X36-07337E for the last 5 years. In your answer, please provide water conservation measures you have implemented for the last 5 years.

ANSWER:

The information sought by this interrogatory is not available. To the extent that such information is generated during the course of preparation for the upcoming hearing, it will be produced.

Item 16 (Interrogatory No. 16)

Please provide any documentation that proves that you have only a verbal contract with Kraft Foods, International and/or any of its related companies. In your answer, include any contractual arrangements you have with Kraft Foods, as well.

ANSWER:

Please see responses to First Chisholm Discovery.

Item 17 (Interrogatory No. 17)

Please provide any and all contracts that relate to sewer usage and/or wastewater treatment and fresh water supply with regards to your Company's operation in Jerome. In your answer, please provide all pre-contractual memos, notes, understandings, verbal agreements or other data or criteria that steered your Company to its present existing Contracts.

ANSWER:

Objection. This interrogatory is over broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. The Protestants have raised no issue in their protests or in the pre-hearing conference which has any bearing whatsoever on the information sought by this interrogatory. Moreover, finding, generating, collecting, or presenting the information would be difficult and unduly burdensome on the Applicant. Finally, the Applicant contends that disclosure of the financial and business information sought by this interrogatory would disclose confidential business information putting the Applicant at a competitive disadvantage.

Item 18 (Interrogatory No. 18)

Please provide a copy of your Industrial wastewater permit, a list of all violations, the resulting effects of those violation, the regulatory consequences and negotiations of those violations, the stated reasons for those violations and the Company's actions to ensure those violations would not recur. In your answer, please explain in the narrative a description of the above categorizations of violations.

ANSWER:

Objection. This interrogatory is over broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. The Protestants have raised no issue in their protests or in the pre-hearing conference which has any bearing whatsoever on the information sought by this interrogatory. Moreover, finding, generating, collecting, or presenting the information would be difficult and unduly burdensome on the Applicant. Finally, the Applicant contends that disclosure of the financial and business information sought by this interrogatory would disclose confidential business information putting the Applicant at a competitive disadvantage.

Item 19 (Interrogatory No. 19)

Please provide a detailed list of all drugs, medicines, antibiotics, compounds, elements, viruses, bacteria, fungi, microbes and chemicals you test for in the milk. In your answer, provide the procedure, time frame, degree of accuracy, legal requirements, and process involved in this testing as well as all reporting agencies involved.

ANSWER:

Objection. This interrogatory is over broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. The Protestants have raised no issue in their protests or in the pre-hearing conference which has any bearing whatsoever on the information sought by this interrogatory. Moreover, finding, generating, collecting, or presenting the information would be difficult and unduly burdensome on the Applicant. Finally, the Applicant contends that disclosure of the financial and business information sought by this interrogatory would disclose confidential business information putting the Applicant at a competitive disadvantage.

Item 20 (Interrogatory No. 20)

Please provide the procedures involved if you find a contaminated (as per Item 19) truckload of milk. In your answer, describe the procedure for identifying the contaminated tanker, where the tanker is held, the time necessary for all tests to be run and how this affects the waiting tanker and the eventual destination of the contaminated milk.

ANSWER:

Objection. This interrogatory is over broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. The Protestants have raised no issue in their protests or in the pre-hearing conference which has any bearing whatsoever on the information sought by this interrogatory. Moreover, finding, generating, collecting, or presenting the information would be difficult and unduly burdensome on the Applicant. Finally, the Applicant contends that disclosure of the financial and business information sought by this interrogatory would disclose confidential business information putting the Applicant at a competitive disadvantage. Notwithstanding these objections and without waiving same, the Applicant refers the Protestant to Applicant's response to Interrogatory No. 6 of Chisholm's First Discovery.

Item 21 (Interrogatory No. 21)

Please provide the annual budget and systems loading budget for your pretreatment facility.

ANSWER:

Objection. This interrogatory is over broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. The Protestants have raised no issue in their protests or in the pre-hearing conference which has any bearing whatsoever on the information sought by this interrogatory. Moreover, finding, generating, collecting, or presenting the information would be difficult and unduly burdensome on the Applicant. Finally, the Applicant contends that disclosure of the financial and business information sought by this interrogatory would disclose confidential business information putting the Applicant at a competitive disadvantage.

Item 22 (Interrogatory No. 22)

Please list all other places of business that are operated in direct association with your Company. In your answer, list the State, address, telephone number, name of Executive in Charge of the ancillary or subsidiary business, the degree of association both legally and financially.

ANSWER:

Objection. This interrogatory is over broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. The Protestants have raised no issue in their protests or in the pre-hearing conference which has any bearing whatsoever on the information sought by this interrogatory. Moreover, finding, generating, collecting, or presenting the information would be difficult and unduly burdensome on the Applicant. Finally, the Applicant contends that disclosure of the financial and business information sought by this interrogatory would disclose confidential business information putting the Applicant at a competitive disadvantage.

Item 23 (Interrogatory No. 23)

Please list all Company and Directors and Executive's charitable donations, political donations and contributions to community efforts made since locating to Idaho.

In your answer, provide a separate list of monies derived from I.S.D.A. pulled milk permit sales, the charities receiving said monies, the dairies associated with each donation, and the tax benefit derived by this donation and the name of the person or Company deriving said tax benefit.

ANSWER:

Objection. This interrogatory is over broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. The Protestants have raised no issue in their protests or in the pre-hearing conference which has any bearing whatsoever on the information sought by this interrogatory. Moreover, finding, generating, collecting, or presenting the information would be difficult and unduly burdensome on the Applicant. Finally, the Applicant contends that disclosure of the financial and business information sought by this interrogatory would disclose confidential business information putting the Applicant at a competitive disadvantage.

Item 24 (Interrogatory No. 24)

Please indicate the final destination, beneficial use and name of water right holder of the potable wastewater that is discharged daily into the North Side Canal Company system. In your answer, provide the total yearly number of gallons discharged, the certification testing requirements and the extent of the review extended to alternate uses of this water.

ANSWER:

The Applicant does not possess this information. Moreover, the Applicant objects to this interrogatory is over broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. The Protestants have raised no issue in their protests or in the pre-hearing conference which has any bearing whatsoever on the information sought by this interrogatory. Moreover, finding, generating, collecting, or presenting the information would be difficult and unduly burdensome on the Applicant. Finally, the Applicant contends that disclosure of the financial and business information sought by this interrogatory would disclose confidential business information putting the Applicant at a competitive disadvantage.

Item 25 (Interrogatory No. 25)

Please describe the major development you have started as referenced in the IDWR memo of December 18, 1998. In your answer, describe how this Transfer is necessary for this development, or not, and how the denial of this Transfer will affect this development.

ANSWER:

The Applicant intends to expand its operation and increase its level of cheese and whey production. However, water is not an input into the production of the cheese and whey products themselves. Rather, water is required at the plant for other purposes, as described in our responses to Chisholm's First Discovery. These other uses are expected to remain relatively constant, despite future increases in cheese and whey production. Consequently, additional water supplies are not required to facilitate the anticipated expansion. Rather, as explained in our responses to Chisholm's First Discovery, the water sought pursuant to the pending application is needed to replace and/or supplement existing supplies and to secure a viable, permanent, reliable, controllable, cost-effective, clean and independent source of water for its industrial use

Item 26 (Interrogatory No. 26)

Please list all alternatives open to you to obtain more water including this transfer. In your answer, include all projected financial comparisons for each option, including this transfer.

ANSWER:

Please see responses to First Chisholm Discovery.

Item 27 (Request for Admission No. 1)

Please admit that this water right was forfeit[ed].

ANSWER:

Denied.

Item 28 (Interrogatory No. 27)

If your response to Item 27 is anything other than an unqualified admission, please state each and every fact and legal theory, case and statute which you contend supports your claim that this water right is not forfeit.

ANSWER:

Objection. This issue was not raised in the prehearing conference nor in the protest, pleadings, or discovery. Consequently, Applicant objects that the issue cannot be raised at this stage of the proceeding. Notwithstanding such objection and without waiving same, the Applicant states that it has no information suggesting or supporting that a forfeiture has occurred.

Item 29 (Request for Production No. 2)

If your response to Item 27 is anything other than an unqualified admission, please produce any and all documents which bear upon or provide evidence with respect to your proof that this water right is not forfeit.

ANSWER:

None.

Item 30 (Request for Admission No. 2)

Please admit that this Transfer will injure other water rights.

ANSWER:

Denied.

Item 31 (Interrogatory No. 28)

If your response to Item 30 is anything other than an unqualified admission, please state each and every fact which you contend supports your claim that the proposed Transfer will not injure other water rights.

ANSWER:

Our consultants are now in the process of collecting and analyzing data and preparing their presentations with respect to injury and enlargement. As information and documents become available, they will be made available through supplementation of these responses.

Item 32 (Request for Production No. 3)

If your response to Item 30 is anything other than an unqualified admission, please produce any and all documents which bear upon or provide evidence with respect to your proof that this Transfer will not injure other water rights.

ANSWER:

Same as Answer to Item 31 above.

Item 33 (Request for Admission No. 3)

Please admit that this Transfer will constitute an enlargement in the use of the original right.

ANSWER:

Denied.

Item 34 (Interrogatory No. 29)

If your response to Item 33 is anything other than an unqualified admission, please state each and every fact which you contend supports your claim that the proposed Transfer will not constitute an enlargement in the use of the original right.

ANSWER:

First, applicant contends that enlargement is not an issue in a transfer proceeding in which the original use(s) of the water are ended and entirely new use(s) are substituted. Second, to the extent enlargement is an issue, no enlargement would occur here because there is no increase in the use or application of water. Only the consumptive use component will be transferred.

Item 35 (Request for Production No. 4)

If your response to Item 30 is anything other than an unqualified admission, please produce any and all documents which bear upon or provide evidence with respect to your proof that this Transfer will not constitute an enlargement of the water right.

ANSWER:

Please see documents produced with Chisholm's First Discovery.

Item 36 (Request for Admission No.4)

Please admit that this Transfer is not in the public interest.

ANSWER:

Denied.

Item 37 (Interrogatory No. 30)

If your response to Item 36 is anything other than an unqualified admission, please state each and every fact with you contend supports your claim that the proposed Transfer is in the public interest.

ANSWER:

Please see responses and documents produced in connection with Chisholm's First Discovery.

Item 38 (Request for Production No. 5)

If your response to Item 36 is anything other than an unqualified admission, please produce any and all documents which bear upon or provide evidence with respect to your proof that this Transfer is in the public interest.

ANSWER:

Please see documents produced in connection with Chisholm's First Discovery.

Item 39 (Request for Admission No. 5)

Please admit that you see basis to the claim that this Transfer could, under any conditions, be detrimental to the public interest.

ANSWER:

We do not understand the question. If the thrust of the request for admission is that there are no conditions under which approval of the transfer application would be in the public interest, we deny.

Item 40 (Interrogatory No. 31)

If your response to Item 39 is anything other than an unqualified admission, please state each and every fact which you contend supports your claim that the proposed Transfer could not, under any condition, be detrimental to the public interest.

ANSWER:

Please see Answer to Item 39.

Item 41 (Request for Production No. 6)

If your response to Item 39 is anything other than an unqualified admission, please produce any and all documents which bear upon or provide evidence with respect to your proof that this Transfer could not, under any condition, be detrimental to the public interest.

ANSWER:

Please see Answer to Item 39. Also see documents produced in connection with Chisholm's First Discovery.

Item 42 (Request for Admission No. 6)

Please admit that this Transfer is not consistent with the conservation of water resources within the State of Idaho.

ANSWER:

Denied.

Item 43 (Interrogatory No. 32)

If your response to Item 42 is anything other than an unqualified admission, please state each and every fact which you contend supports your claim that the proposed Transfer is consistent with the conservation of water resources within the State of Idaho.

ANSWER:

Please see responses to Chisholm's First Discovery.

Item 44 (Request for Production No. 7)

If your response to Item 42 is anything other than an unqualified admission, please produce any and all documents which bear upon or provide evidence with respect to your proof that this Transfer is consistent with the conservation of water resources within the State of Idaho.

ANSWER:

Please see prior answers.

Item 45 (Request for Admission No. 7)

Please admit that this Transfer will constitute a consumptive use.

ANSWER:

We are not certain that we understand this question. The proposed use is a consumptive use in the sense that some of the water diverted will be consumed or lost in the course of beneficial use. In this sense, it is no different from virtually any other industrial or agricultural water right.

Item 46 (Interrogatory No. 33)

If your response to Item 45 is anything other than an unqualified admission, please state each and every fact which you contend supports your claim that the proposed Transfer will not constitute a consumptive use.

ANSWER:

Please see response to Item 45.

Item 47 (Request for Production No. 8)

If your response to Item 45 is anything other than an unqualified admission, please produce any and all documents which bear upon or provide evidence with respect to your proof that this Transfer will not constitute a consumptive use.

ANSWER:

Please see response to Item 45.

Item 48 (Request for Admission No. 8)

Please admit that this Transfer constitutes a change in the nature of use from agricultural to commercial/industrial use.

ANSWER:

Admitted.

Item 49 (Interrogatory No. 34)

If your response to Item 48 is anything other than an unqualified admission, please state each and every fact which you contend supports your claim that the proposed Transfer does not constitute a change in the nature of use from agricultural to commercial/industrial use.

ANSWER:

The proposed change in use to industrial is stated on the application. Also see documents produced in connection with Chisholm's First Discovery.

Item 50 (Request for Production No. 9)

If your response to Item 48 is anything other than an unqualified admission, please produce any and all documents which bear upon or provide evidence with respect to your proof that this Transfer does not constitute a change in the nature of use from agricultural to commercial/industrial use.

ANSWER:

The proposed change in use to industrial is stated on the application. Also see documents produced in connection with Chisholm's First Discovery.

Item 51 (Request for Admission No.9)

Please admit that you own no water rights.

ANSWER:

Denied.

Item 52 (Interrogatory No. 35)

If your response to Item 51 is anything other than an unqualified admission, please identify each water right you own wherein the water from each right is not physically connected in reality.

ANSWER:

Jerome Cheese has purchased the two water rights which are subject to transfer applications No. 5401 and 5436. As contract documents which have been produced show, full payment is not required until the transfers are approved by the Department. Jerome Cheese owns no other water rights. We do not know what the Protestant means by "wherein the water from each right is not physically connected in reality." If the intent is to inquire whether the proposed new point(s) of diversion (after transfer) will draw from the same aquifer as the original point(s) of diversion (before transfer), the Applicant contends that this is the case.

Item 53 (Request for Production No. 10)

If your response to Item 51 is anything other than an unqualified admission, please produce any and all documents which bear upon or provide evidence with respect to your proof that the water from each right is not physically connected in reality.

ANSWER:

Please see response to Item No. 52.

Our consultants are now in the process of collecting and analyzing data and preparing their presentations with respect to injury and, in particular, the impact of the change in point of diversion. As information and documents become available, they will be made available through supplementation of these responses.

Item 54 (Request for Admission No. 10)

Please admit that expansion of your Company has the overall effect of increasing the overall consumptive use of groundwater by requiring the need for more dairy cows.

ANSWER:

We are without sufficient information to admit or deny. Consequently, we deny.

Item 55 (Interrogatory No. 36)

If your response to Item 54 is anything other than an unqualified admission, please state each and every fact which you contend supports your claim that the expansion of your Company does not require the need for more dairy cows.

ANSWER:

Please see response to Item 54.

Item 56 (Request for Production No. 11)

If your response to Item 54 is anything other than an unqualified admission, please produce any and all documents which bear upon or provide evidence with respect to your proof that the expansion of your Company does not require the need for more dairy cows.

ANSWER:

Please see response to Item 54. Also, see documents produced in conjunction with Chisholm's First Discovery.

Item 57 (Request for Admission No. 11)

Please admit that you know the limits of the sustainability or natural cycle or chemical balance of dairy nutrients (manure) and wastewater when land applied, in a cow per acre relationship.

ANSWER:

Denied.

Item 58 (Interrogatory No. 37)

If your response to Item 57 is anything other than an unqualified admission, please state each and every fact which you contend supports your claim that you do not know the limits of the sustainability or natural cycle or chemical balance of dairy nutrients (manure) and wastewater when land applied, in a cow per acre relationship.

ANSWER:

Objection. This interrogatory is ambiguous, over broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Moreover, finding, generating, collecting, or presenting the information would be difficult and unduly burdensome on the Applicant.

Item 59 (Interrogatory No. 38)

If your response to Item 57 is in the negative please state all efforts made by your Company to obtain knowledge, prior to this Discovery, as to these limits and whether you believe these limits should affect your proposed Transfer.

ANSWER:

Objection. This interrogatory is ambiguous, over broad, unduly burdensome, and

not reasonably calculated to lead to the discovery of admissible evidence. Moreover, finding, generating, collecting, or presenting the information would be difficult and unduly burdensome on the Applicant.

Item 60 (Interrogatory No. 39)

In regards to the limits referenced in Item 57, if it is found by reliable scientific sources, such as U.S.G.S., D.E.Q. or I.S.D.A. that these limits have been exceeded, would you support possible action to have these limits met?

ANSWER:

Objection. This request documents the ulterior motive of the Protestant, which has nothing whatsoever to do with the water right transfer at issue. The Applicant objects to this interrogatory is over broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Moreover, finding, generating, collecting, or presenting the information would be difficult and unduly burdensome on the Applicant. Notwithstanding these objections and without waiving same, Jerome Cheese states that officials and representatives of the Idaho Dairymen's Association, the Idaho Department of Agriculture, and the Idaho Division of Environmental Quality may have information pertaining to this subject, and could be called as witnesses, if necessary and appropriate.

Item 61 (Interrogatory No. 40)

If the action referenced in Item 60 was limited to reducing the number of dairy cows because there is not enough available land for manure application and cost of transporting manure to other available land is prohibitive, would you support this action?

ANSWER:

Objection. This request documents the ulterior motive of the Protestant, which has nothing whatsoever to do with the water right transfer at issue. The Applicant objects to this interrogatory is over broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Moreover, finding, generating, collecting, or presenting the information would be difficult and unduly burdensome on the Applicant. Notwithstanding these objections and without waiving same, Jerome Cheese states that officials and representatives of the Idaho Dairymen's

Association, the Idaho Department of Agriculture, and the Idaho Division of Environmental Quality may have information pertaining to this subject, and could be called as witnesses, if necessary and appropriate.

Item 62 (Request for Admission No. 12)

Please admit that land application of cow manure and wastewater is polluting the Snake River Plain Aquifer.

ANSWER:

Objection. This request documents the ulterior motive of the Protestant, which has nothing whatsoever to do with the water right transfer at issue. The Applicant objects to this interrogatory is over broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Moreover, finding, generating, collecting, or presenting the information would be difficult and unduly burdensome on the Applicant. Notwithstanding these objections and without waiving same, Jerome Cheese states that officials and representatives of the Idaho Dairymen's Association, the Idaho Department of Agriculture, and the Idaho Division of Environmental Quality may have information pertaining to this subject, and could be called as witnesses, if necessary and appropriate.

Item 63 (Interrogatory No. 41)

If your response to Item 62 is anything other than an unqualified admission, please state each and every fact which you contend supports your claim that land application of cow manure and wastewater is not polluting the Snake River Plain Aquifer.

ANSWER:

Objection. This request documents the ulterior motive of the Protestant, which has nothing whatsoever to do with the water right transfer at issue. The Applicant objects to this interrogatory is over broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Moreover, finding, generating, collecting, or presenting the information would be difficult and unduly burdensome on the Applicant. Notwithstanding these objections and without waiving same, Jerome Cheese states that officials and representatives of the Idaho Dairymen's Association, the Idaho Department of Agriculture, and the Idaho Division of

Environmental Quality may have information pertaining to this subject, and could be called as witnesses, if necessary and appropriate.

Item 64 (Request for Production No. 12)

If your response to Item 62 is anything other than an unqualified admission, please produce any and all documents which bear upon or provide evidence with respect to your proof that land application of cow manure and wastewater is not polluting the Snake River Plain Aquifer.

ANSWER:

Objection. This request documents the ulterior motive of the Protestant, which has nothing whatsoever to do with the water right transfer at issue. The Applicant objects to this interrogatory is over broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Moreover, finding, generating, collecting, or presenting the information would be difficult and unduly burdensome on the Applicant. Notwithstanding these objections and without waiving same, Jerome Cheese states that officials and representatives of the Idaho Dairymen's Association, the Idaho Department of Agriculture, and the Idaho Division of Environmental Quality may have information pertaining to this subject, and could be called as witnesses, if necessary and appropriate.

Item 65 (Request for Admission No. 13)

Please admit that trends in scientific studies are viable indicators of changing conditions.

ANSWER:

It is admitted that trend data may be "viable indicators" in some instances, depending on the quality of the data, analysis and other factors. The statement is denied to the extent it is offered as a statement of absolute or universal applicability.

Item 66 (Interrogatory No. 42)

If your response to Item 65 is anything other than an unqualified admission, please state each and every fact which you contend supports your claim that trends in scientific

studies are not viable indicators of changing conditions.

ANSWER:

Please see response to Item 65. The Applicant is unable to make a more detailed response, as the Protestant has not identified which trend or scientific study he has in mind.

Item 67 (Request for Production No. 13)

If your response to Item 65 is anything other than an unqualified admission, please produce any and all documents which bear upon or provide evidence with respect to your proof that trends in scientific studies are not viable indicators of changing conditions.

ANSWER:

Please see response to item 66.

Item 68 (Request for Admission No. 14)

Please admit that you trust the scientific integrity of the United States Geological Survey.

ANSWER:

Denied. Although the Applicant has no reason to doubt the integrity of this governmental body, the statement is too vague and general to enable an unqualified admission. Moreover, the Protestant has failed to identify which study, report, finding, or conclusion of the U.S.G.S. it is speaking of.

Item 69 (Interrogatory No. 43)

If your response to Item 68 is anything other than an unqualified admission, please state each and every fact which you contend supports your claim that the U.S.G.S.'s scientific integrity should be suspect.

ANSWER:

Applicant has no basis on which to doubt the integrity of the U.S.G.S. That does not mean that the Applicant agrees with every study, report, finding, or conclusion of the U.S.G.S.

Item 70 (Request for Production No. 14)

If your response to Item 68 is anything other than an unqualified admission, please produce any and all documents which bear upon or provide evidence with respect to your proof that the U.S.G.S.'s scientific integrity should be suspect.

ANSWER:

We have no documents to produce in this regard.

Item 71 (Request for Admission No. 15)

Please admit that Jerome Cheese Company maintains an unsafe work environment according to standards set by O.S.H.A.

ANSWER:

Objection. This request is over broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Moreover, finding, generating, collecting, or presenting the information would be difficult and unduly burdensome on the Applicant. Notwithstanding these objections and without waiving same, Jerome Cheese denies the request for admission.

Item 72 (Interrogatory No. 44)

If your response to Item 71 is anything other than an unqualified admission, please state each and every fact which you contend supports your claim that Jerome Cheese maintains a safe work environment according to standards set by O.S.H.A.

ANSWER:

Objection. This request is over broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Moreover, finding, generating, collecting, or presenting the information would be difficult and unduly

burdensome on the Applicant.

Item 73 (Request for Production No. 15)

If your response to Item 71 is anything other than an unqualified admission, please produce any and all documents which bear upon or provide evidence with respect to your proof that Jerome Cheese maintains a safe work environment according to standards set by O.S.H.A. Please include a list of all violations issued by O.S.H.A.

ANSWER:

Objection. This request is over broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Moreover, finding, generating, collecting, or presenting the information would be difficult and unduly burdensome on the Applicant.

Item 74 (Request for Admission No. 16)

This request is directed specifically to Givens Pursley. Please admit that your firm never uses electronic means [in] conferences, depositions or taking of testimony.

ANSWER:

Objection. Givens Pursley LLP is not a party to this administrative litigation and is not subject to interrogatories or similar discovery. Moreover, the question is not reasonably calculated to lead to the introduction of admissible evidence. Notwithstanding such objections and without waiving same, Givens Pursley LLP denies the request for admission.

Item 75 (Interrogatory No. 45)

If your response to Item 74 is anything other than an unqualified admission, please provide the approximate number of electronically held conferences, depositions or taking of testimony your firm handled in 1998.

Objection. Givens Pursley LLP is not a party to this administrative litigation and is not subject to interrogatories or similar discovery. Moreover, the question is not reasonably calculated to lead to the introduction of admissible evidence. Moreover,

finding, generating, collecting, or presenting the information would be difficult and unduly burdensome on Givens Pursley LLP. Notwithstanding such objections and without waiving same, Givens Pursley LLP states that it frequently employs electronic means for procedural conferences. It occasionally employs electronic means for oral arguments. It never (to the undersigned counsel's recollection) has employed electronic means for a hearing involving the interrogation of witnesses and the offering of evidence.

Dated this 9th day of June, 1999.

GIVENS PURSLEY LLP

By _____
Christopher H. Meyer

Attorneys for Applicant
Jerome Cheese

VERIFICATION

J. Rex Minchey, acting under authority of and on behalf of Jerome Cheese, being first duly sworn upon oath, deposes and says:

Jerome Cheese is the Applicant in the above-captioned matter. I serve as Maintenance Manager for Jerome Cheese and am authorized by Jerome Cheese to respond to all discovery in this matter on behalf of Jerome Cheese. I have read the foregoing requests and responses. The statements contained therein are true to the best of my knowledge and belief.

Dated: June 9 1999

J. Rex Minchey
Maintenance Manager
Jerome Cheese

STATE OF IDAHO)
) ss.
COUNTY OF JEROME)

On this 9 day of June, 1999, before me, a Notary Public, personally appeared J. Rex Minchey, known or identified to me to be the Maintenance Manager of Jerome Cheese, whose name is subscribed to the foregoing instrument on behalf of said corporation, and acknowledged to me that s/he is authorized to and did execute the same on behalf of said corporation.

NOTARY PUBLIC for Idaho
Residing at _____, Idaho
My commission expires: 3/13/2003

Lee J. Halper
331 S. 230 W.
Jerome, ID 83338

BEFORE THE DIRECTOR
IDAHO DEPARTMENT OF WATER RESOURCES

In the Matter of Application of Jerome Cheese Company for Water Rights Transfers 5401 and 5436 Lee Halper, Protestant Jerome Cheese Company, Applicant	)))))	Motion to Continue Hearing

Comes now Protestant Lee Halper and requests a continuance of the Hearing(s) set for July 27 and 28th.

Due to the complete lack of information forthcoming from the Applicant during Discovery, and because no Subpoena requiring documentation was approved by the Department, this Protestant has been left lacking required documents, proof, information and scientific facts necessary to provide proofs, arguments, scientific theorems and trends sufficient to counter Applicant's probable proofs, arguments and scientific theorems and trends. An extension of time will allow the Protestant time to gather these documents, et cetera, himself as the witnesses who would supply these by obeying a Ducas Tecum Subpoena have been denied him.

Dated this 19th day of July, 1999

Lee Halper

MICROFILMED

Lee J. Halper
331 S. 230 W.
Jerome, ID 83338

BEFORE THE DIRECTOR
IDAHO DEPARTMENT OF WATER RESOURCES

In the Matter of Application of Jerome Cheese Company for Water Rights Transfers 5401 and 5436 Lee Halper, Protestant Jerome Cheese Company, Applicant	)))))	Motion to Disqualify Hearing Officer

Comes now Protestant Lee Halper and makes a Motion that L. Glen Saxton, Hearing Officer in the above named matter, disqualify himself for causes and reasons set forth below.

1. Hearing Officer has denied Protestant full ability to present a credible case and presentation by limiting desired witnesses, documents, information and facts. The logic used as reasoning in this limitation is circular in nature and has been used on both sides of decisions affecting Protestant. Although this reasoning failure was pointed out to the Hearing Officer, it was used again in the reasoning for the issuance of a Subpoena to Lewis Eilers while not used in the issuance of a Subpoena for other witnesses. Clearly, the Hearing Officer reaches decisions favorable to the Applicant without providing consistent and fair logic and reasoning which shows bias, prejudice and a predisposition to the outcome of this matter.

2. Hearing Officer's limitation of the Local public interest issues is arbitrary and capricious and designed to favor the Applicant which shows bias, prejudice and a predisposition towards the Applicant's case.

3. Hearing Officer has made remarks about the volume of Protestant's written communication with him to the extent that such communication was wasting his time rather than being the sincere product of a citizen's involvement in the public process. This shows a predisposition to the outcome of this matter and a violation of the responsibilities of a public official.

4. Hearing Officer's non-enforcement of the time line contained in his Order for Completing Discovery is to the advantage of the Applicant and has been detrimental to the Protestant's case. Although Protestant requested clarification and relief of this situation, none was forthcoming which shows a disregard for Protestant's rights.

MICROFILMED

5. Hearing Officer's limitation of the Public Interest issues in this case show not only a lack of professional knowledge as to the extent of Protestant's public interest issues but a bias, prejudice and predisposition towards the final decision. This is proven by his quick decision to the Applicant's 'Request for Clarification regarding scope of Hearing' of July 14th and decided on the same day. As the letter of this decision was dated July 15th, it was received by Protestant July 15th which allows that it was written and submitted for mailing July 14th. As this Request was delivered by hand by the Applicant, which is also the case in other Motions by the Applicant, an unhealthy familiarity between the Hearing Officer and the Applicant exists which is biased and prejudicial to the Protestants in this matter. The possibility of ex parte communications has to be recognized as evidenced by the overwhelming one sided disposition of the Hearing Officer's decisions in these matters.

I respectfully request that the Hearing Officer in this matter, L. Glen Saxton, recuse himself as Hearing Officer so that a fair and just decision can be made in the relatively inexpensive arena of the Department's Hearing rather than at the overly burdensome and expensive arena of Court.

Dated this 19th day of July, 1999

Lee Halper-Protestant

CERTIFICATE OF SERVICE

I hereby certify that on July 20th, 1999 I caused to be served a true and correct copy of the foregoing to each of the persons named below by the method indicated below each of their names.

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

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

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

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

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

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

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

Lee Halper

RECEIVED
JUL 20 1999
Department of Water Resources

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

RECEIVED
JUL 19 1999
Department of Water Resources
Southern Region

PATRICK D. BROWN
PARKER, WARR & BROWN
Attorneys at Law
812 Shoshone Street East
Twin Falls, Idaho 83301
Telephone: (208) 735-8812
Idaho State Bar No. 4413

Attorneys for City of Jerome

BEFORE THE IDAHO STATE DEPARTMENT OF WATER RESOURCES

In Re Application for Transfer of Jerome Cheese Company	Transfer Nos. 5401 and 5436 **MOTION FOR RECONSIDERATION OF ORDER DENYING PETITION FOR INTERVENTION AND ALTERNATIVELY, MOTION TO FILE A LATE PROTEST**

The City of Jerome, through its attorneys, Robert E. Williams of the law firm of Fredericksen, Williams & Meservy and Patrick D. Brown of the law firm Parker, Warr & Brown, hereby moves the Department for an order reconsidering its order denying Petition For Intervention dated July 2, 1999, or alternatively to allow the City of Jerome to file a late protest in these proceedings. In support of these motions, the City of Jerome states that:

MICROFILMED

1. On June 11, 1999, the City of Jerome filed its initial petition to intervene. Its amended petition was filed on June 18, 1999.

2. Although the Jerome Cheese Company filed an opposition to the Petition For Intervention on June 14, 1999, a copy of that opposition was not received by the City of Jerome until July 6, 1999, four days after the denial of the Petition for Intervention. See Affidavit of Deborah Coffel attached hereto as Exhibit "A."

3. The Petition for Intervention was filed more than 14 days before the hearing now set in this matter for July 28, 1999. The filing of the Petition for Intervention was therefore not untimely under Administrative Rule 352 since no prehearing conference was held.

4. On June 7, 1999, the City of Jerome was faxed a copy of a letter, a copy of which is attached hereto as Exhibit "B," signed by Dennis Moore, Mayor of the City of Jerome and a part time employee of the Applicant.

5. The letter copied as Exhibit "B" was provided by fax from Lee Halper, a protestant in this matter. The letter was sent by Dennis Moore, the duly elected and serving Mayor of the City of Jerome and also part time employee of the applicant. The letter was sent by Mr. Moore without the knowledge of the Jerome City Council or any other employee or official of the City of Jerome. The letter did not express the official position of the City of Jerome and, in fact, failed to address many concerns of members of the City Council of the City of Jerome regarding the proposed transfer. The City of Jerome's Petition For Intervention was filed soon after the receipt of the letter from Mr. Halper because the letter did not state the true position of the City of Jerome regarding the proposed transfer. The members of the Jerome City Council were concerned and remained very concerned that the Mayor of Jerome would send such a letter mentioning his official capacity while he was at the same time employed by the Applicant.

6. The real property proposed for the new well site is located at the Jerome Cheese Company plant site on the southwest border of the City of Jerome. This 17 acre site is bounded by the city limits of Jerome on the north, south and east boundaries. The

real property is presently the subject of annexation proceedings initiated by the City of Jerome.

7. Jerome Cheese Company is presently the single largest user of water and waste water treatment services provided by the City of Jerome. Even though Jerome Cheese Company has not been in the city limits during the period of its existence, it has used public water and waste water treatment services provided by the City of Jerome during the entire time it has been in operation.

8. The City of Jerome presently has a contract with Jerome Cheese Company for the receipt of waste water. A copy of that contract is attached hereto as Exhibit "C." The present contract expires December 31, 1999. There is no assurance that negotiations for the continuation of this contract will be successful. Therefore, the City of Jerome has a substantial interest in determining what contingency plans Jerome Cheese Company has, if any, for the treatment of wastewater generated from its facility should the Jerome wastewater treatment plant no longer be available or willing to treat its effluent. The wastewater treated by the City of Jerome will include water taken from the new well to be drilled upon approval of the present transfer application.

9. In an effort to resolve the City's concerns concerning potential cross connections between the private water system and the public water system of the City of Jerome and other related concerns, a meeting with personnel of the Applicant was held on June 25, 1999. As a consequence of that meeting, it was agreed that the City would have an opportunity to review engineering drawings for the proposed water supply system to confirm the representations of the Applicant that the City's concerns regarding cross connections would be met. Drawings have recently been provided to the City, but the scale is too small to be legible. The City understands that arrangements are being made to provide the larger scale drawings and the requested review will shortly take place.

10. Responding to Mr. Rex Minchey's letter of June 12, 1999, contained in the opposition of Jerome Cheese Company filed June 14, 1999, a copy of which the City first received on July 6, 1999, both the Spears Manufacturing and Western Potato Processors wells existed prior to the annexation of those properties by the City of

Jerome. Therefore, Mr. Minchey is incorrect when he states that those firms developed private water supplies without the opposition of the City since neither facility was the subject of an annexation proceeding at the time their wells were developed.

11. The City of Jerome was never approached by the Applicant concerning its intention or reason for developing a private water system. The first time any information was provided to the City by the Applicant concerning those matters was at the June 25, 1999, meeting in Boise.

12. The City of Jerome also believes there is a genuine issue as to enlargement of the water right since the applications for transfer do not address what happens to the City of Jerome's water that was formerly being used by Jerome Cheese Company. There may be no net enlargement with respect to the transferred rights themselves, but the applications do not address the impact on the City's water rights.

13. The Applicant may claim that it is being prejudiced by these motions. However, the Applicant's Memorandum in Support of Motion in Limine and Motion for Protective Order dated June 10, 1999, clearly establishes that the Applicant is aware of these issues. The enlargement issue is discussed in detail in Section 1 of the argument. Furthermore, on page 17 of the Applicant's Memorandum, the Applicant states that "...the purpose of the local public interest provision was to enable the Department of Water Resources to take into account apparent environmental and social impacts which flow from the water right transfer itself." The discovery documents disclose that various officials from the City of Jerome were to be called as witnesses by the existing protestant and it is therefore safe to assume that the Applicant was well aware of potential public interest issues that could be raised by the City of Jerome.

14. The sole motive of the City of Jerome in requesting the ability to participate in this hearing is to assure that the public interest, defined as the interest of the residents and taxpayers of the City of Jerome who own the public water and public wastewater treatment systems that benefit the Applicant, will be protected. The City of Jerome has no other motive in this matter.

15. It is the City of Jerome's belief that the lack of filing a timely petition for intervention or protest by the City of Jerome in this matter is directly attributable to the Mayor of the City of Jerome, while being employed by the Applicant, advocating the approval of the application without communicating that position to the Jerome City Council, the majority of which continues to have concerns regarding the application. Mayor Moore's letter copied the Applicant's attorney as well as Rex Minchey who signed the Application for Transfer on behalf of Jerome Cheese Company. It is difficult for the City to believe that the letter was not solicited or encouraged by the Applicant. Under these circumstances, the City should be allowed to participate in the proceedings as an intervenor or as a protestant.

Respectfully submitted this 16th day of July, 1999.

FREDERICKSEN, WILLIAMS & MESERVY

By: _____
ROBERT E. WILLIAMS
Attorney for Petitioner

CERTIFICATE OF SERVICE

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

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

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

Bill Chisolm
19073 East Highway 30
Buhl, ID 83316

Lee Halper
321 South 230 West
Jerome, ID 83338

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

Darcy Thornborrow
1676 East 3800 North
Buhl, ID 83316

DATED: 2/16/99

ROBERT E. WILLIAMS

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

PATRICK D. BROWN
PARKER, WARR & BROWN
Attorneys at Law
812 Shoshone Street East
Twin Falls, Idaho 83301
Telephone: (208) 735-8812
Idaho State Bar No. 4413

Attorneys for City of Jerome

BEFORE THE IDAHO STATE DEPARTMENT OF WATER RESOURCES

In Re Application for Transfer of Jerome Cheese Company	Transfer Nos. 5401 and 5436 **AFFIDAVIT OF DEBORAH COFFEL**

STATE OF IDAHO)
)
County of Jerome)

DEBORAH COFFEL, being first duly sworn, hereby deposes and says:

1. I am one of the secretaries for Fredericksen, Williams & Meservy.

2. One of my duties is to open the mail on the mornings our receptionist is unavailable to do so and place a stamped, dated receipt on each item of mail. The Opposition of

C:\Marie's Files\City of Jerome\IDWR\affidavit.coffel

Exhibit A

Jerome Cheese Company, dated June 14, 1999, was received in the mail by our office on the morning of July 6, 1999.

Further your affiant sayeth naught.

DEBORAH COFFEL

SUBSCRIBED and SWORN to before me this 16th day of July, 1999.

NOTARY PUBLIC for Idaho
Residing at Jerome
Commission Expiration: 12-30-99

CERTIFICATE OF SERVICE

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

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

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

Bill Chisolm
19073 East Highway 30
Buhl, ID 83316

Lee Halper
321 South 230 West
Jerome, ID 83338

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

Darcy Thornborrow
1676 East 3800 North
Buhl, ID 83316

DATED: _____

ROBERT E. WILLIAMS

May 28, 1999

RECEIVED
JUN - 1 1999
Pursley, LLP

Mr. L. Glen Saxton
Idaho Department of Water Resources
P.O. Box 83720
Boise, ID 83720-0098

Dear Mr. Saxton:

You will hear from a number of recognized experts supporting the Jerome Cheese water transfer and how there will not be a negative impact associated with it. Please accept this letter as my personal support of the proposed Jerome Cheese Company water transfer application. As Mayor of the City of Jerome and as a part time Jerome Cheese employee, I can list many positive impacts that Jerome Cheese has on this community.

The most critical issue we face is sustainable economic strength and growth. Jerome Cheese Company has contributed to the overall well being of this entire community. Approval of the water transfer will work well for the City of Jerome as well as for South Central Idaho.

Sincerely,

Dennis Moore

Dennis Moore

cc: Christhopher H. Meyer
Rex Minchey

INDUSTRIAL USER AGREEMENT

THIS AGREEMENT, is made and entered into this 3rd day of April, 1998, by and between JEROME CHEESE COMPANY, a Minnesota corporation, qualified to do business in Idaho, hereinafter referred to as "Industry", and the CITY OF JEROME, State of Idaho, a municipal corporation of the State of Idaho, hereinafter referred to as "City"

RECITALS

A. Industry owns a plant and related facilities for the manufacturing of cheese, which plant and foundation are adjacent to the City.

B. Industry is connected to the water and wastewater systems owned by City.

C. Industry produces substantial quantities of effluent that are discharged to the City's wastewater treatment system.

D. The City possesses a permit allowing treated wastewater from its wastewater treatment facility to be discharged to waters of the United States of America.

E. City's wastewater treatment facility is capable of removing settleable and suspended solids and reducing biochemical oxygen demand from wastewater effluent produced by Industry.

F. Industry has connected to the wastewater treatment facilities of the City and desires to continue to enjoy the benefits thereof, including the operation and maintenance services provided by the City, and,

G. The parties wish to agree upon terms and conditions whereby City will continue to accept certain volumes of wastewater effluent produced by Industry, and Industry will pay to City reasonable fees for the services thus provided.

IT IS THEREFORE AGREED, in consideration of these recitals and the mutual promises and covenants hereafter contained, as follows:

1. Prior Agreement: This agreement replaces the Industrial User Agreement regarding wastewater treatment entered into between the parties on the 5th day of May, 1992, extended by letter agreement to a term ending December 31, 1997.

2. Term: The term of this agreement shall be for a period commencing January 1, 1998, and ending at Midnight (12 a.m.) December 31, 1999. The initial term of the agreement may be extended by written agreement executed by both parties.

3. Volume of Effluent; Manner of Discharge; Compliance with Existing Ordinances:

DRAFT
C

(a) Industry shall comply with every applicable provision of Chapters 13.04, 13.08, 13.12, 13.16, 13.20 and 13.36 of the Jerome Municipal Code as they now exist or as they may be amended hereafter. Any conflicts between this agreement and the applicable provisions of the Jerome Municipal Code shall be controlled by this agreement.

(b) Industry shall abide by every term and condition of the Industrial Waste Discharge Permit issued to it by the City on September 15, 1995, a copy of which is attached hereto as Exhibit "A" and which is incorporated by reference into this agreement. Any default by Industry under the permit shall be considered a default under this agreement.

4. Fees: Industry shall be charged an all inclusive monthly fee for sewer service which includes charges for flow and wastewater strength. The fee shall be determined by the total of the following component charges:

(a) Flow - a fee of $.729 per 1000 gallons of flow.

(b) Biological Oxygen Demand (BOD):

0 - 6000 lbs/day	$0.25 per pound
6000 - 7500 lbs/day	$0.27 per pound
7500 - above lbs/day	$0.33 per pound

(c) Total Suspended Solids (TSS) - $.235/lb.

For every hour in which the pH of the effluent discharged by Industry to the wastewater treatment system does not fall within the range of 6.0 - 9.0: (1) Industry shall pay, in addition to all other fees due under this agreement, a surcharge of $10.00 per hour for every hour or portion of hour that the pH falls between 5.0 and 6.0 or between 9.0 and 10.0, provided that Industry shall be granted a 15 minute grace period per occurrence. (2) If the pH is less than 5 or more than 10 the surcharge shall be increased to $100.00 per hour or portion of hour per pH unit under 5 or over 10, until the pH returns to within the permitted range. There is a maximum of 15 minutes grace period for pH discharges under 5 or over 10 before the surcharges required by this paragraph shall be assessed.

Industry shall self-monitor and report pH conditions to the city's wastewater treatment operator on a daily basis. Industry shall report to the City Clerk's Office all pH excursions, duration, and strength on a monthly basis. This report shall be accompanied by payment in full for all pH surcharges due the city. Industry shall maintain a chart record which shall chart pH range 24 hours per day, 7 days per week. Copies of all charts shall be provided the City on a daily basis.

"Industry shock load" to the wastewater treatment system for purposes of this agreement is defined as a short term effluent discharge with sufficiently high

concentration to cause a draw down in the Dissolved Oxygen content of the aeration basin to below 1 part per million, caused by Jerome Cheese Co. Industry shall pay the City the difference in increased electrical demand for the month caused by short term shock loadings to the City's wastewater treatment plant. Increased electrical demand shall be calculated by applying the previous demand charge and the shock load demand charges to the remaining components of the electrical rate structure.

Failure to notify the City's wastewater treatment system operator of a known discharge within 8 hours of when the Industry knew of, or reasonably should have known of a discharge, that is in excess of established chemical, organic, or solids loading parameters shall be considered failure to notify. The Industry shall at the discretion of the Council of the City, pay a surcharge of $1,500.00 per occurrence in addition to all other fees due under this agreement.

In the event that Industry ceases operations for a thirty-day period, then Industry shall pay a minimum payment of one month's principal and interest payment on the revenue bond the City issued to finance the construction of the wastewater treatment plant expansion, for each month that the plant is not operating, less any wastewater service revenue received from other businesses in the Jerome Industrial Park establishing service subsequent to the execution of this agreement. An amortization schedule of the revenue bond is attached hereby as Exhibit "B". At the time the City's debt for the revenue bond is fully paid, the minimum fee structure for plant non-operation shall be renegotiated.

Should the Industry discharge effluent that exceeds the standards set forth in paragraph 4 above, Industry shall pay to City additional costs as set forth in paragraph 7 below. Industry shall be billed on a monthly basis for user fees which bills shall be due and payable within thirty (30) days of the date of billing. In the event that BOD levels go under the minimum amount required to meet principal and interest on the City's existing revenue bond, an amortization schedule for which is attached hereto as Exhibit "B", for two consecutive months, then the parties shall renegotiate the fees set forth in this paragraph to cover such costs.

Industry reserves the right to construct their own Wastewater Pretreatment Facility. If Industry chooses to build their own pretreatment facility the parties shall renegotiate the Industry's fee schedule ninety (90) days prior to the start up of the new facility. If the parties cannot negotiate the new fees, the new fee shall be determined by binding arbitration pursuant to I.C. § 7-901 et seq. An arbitrator shall be selected by the parties. If the parties cannot agree on an arbitrator, the arbitrator shall be selected by the District Judge of the Fifth Judicial District Court sitting in Jerome County, Idaho. The arbitrator shall promulgate rules of arbitration which shall be designed to conduct an expedient, efficient arbitration determining the reasonable fees to be assessed Industry under this agreement in light of the pretreatment by the Industry of its effluent.

5. Renegotiation of Fees; Third Party Review of Rates: The fees set forth in paragraph 4 above shall be renegotiated annually ninety (90) days prior to the

anniversary date of this agreement. Fees shall be based on actual or projected discharges and costs. If no agreement is reached, the City may increase the fee unilaterally to no more than 5% over the previous year's fee. The parties may, if they mutually agree in writing, submit existing rates under this agreement to a qualified third party for review.

6. Monitoring Flow: Industry agrees to provide suitable facilities to the City for sampling its discharge into the wastewater treatment system of the City. Metering equipment shall be operational prior to any discharge to the City. The City will monitor the flow every day for volume during the term of this agreement. Monitoring for content will occur every other day or more frequently if necessary and will include, but not be limited to, the flow into the City's system, the biochemical oxygen demand of the effluent, suspended solids within the effluent, and other chemical composition thereof. Biochemical oxygen demand shall be determined by the City on the basis of its samples. Industry shall from time to time take split samples to have tested at a state certified lab at Industry's expense to verify the sampling taken by City. Should discrepancies of greater than ten percent (10%) be noted, City and Industry shall reserve the right to engage a third independent certified laboratory who would serve as an arbitrator. The City will keep an accurate record of its sampling and testing activities, which records shall be available to Industry upon reasonable notice. The City shall be responsible for the daily and scheduled maintenance and repair of the metering station with the exception of flow and pH meter calibrations. Industry shall provide copies of quarterly or more frequently scheduled flow meter calibration to the City. The City at its own expense may have the flow meter calibration checked and confirmed.

7. Fines and Penalties; Indemnification and Hold Harmless: Should the Industry be in default under this agreement, then Industry shall be responsible for:

(a) Any fines and penalties imposed on the City by the Environmental Protection Agency of the United States government, or the Department of Health and Welfare, Division of Environmental Quality of the State of Idaho caused by Industry's discharges into the wastewater system of the City;

(b) All subsequent costs of the City incurred to return the wastewater treatment facility biological processes to normal operation in the event of a violation of existing permit standards or as they may hereafter be amended. Additionally, all costs, expenses or additional penalties which may be incurred by the City in negotiating or contesting the amount or imposition of any fines or penalties for which Industry may ultimately be responsible, and any other costs or expenses of any kind or nature which may be incurred by the City as a result of Industry's default.

(c) The City agrees to cooperate with Industry in negotiating the payment of any fines or penalties sought by the United States Environmental Protection Agency or other state or federal agencies

asserting the final fine or penalty. The entire costs of such negotiations shall be that of the Industry.

(d) Industry agrees to promptly pay all fines and penalties when they have finally been determined by the administrative body.

8. Metering Equipment: Industry shall, at its sole expense, provide and maintain a metering station to the City for the installation of a meter to monitor the amount of the discharge into the City's wastewater treatment facility, including pH of the effluent. City shall have the right to make the sampling and metering station secure to its own satisfaction during monitoring activities.

9. Non Transferability: The parties hereto acknowledge and agree that neither will, without the express written consent of the other first having been obtained, assign, transfer, or convey this agreement to any third party. The City will not withhold its consent to any proposed transfer unreasonably.

10. Attorney Fees on Default: Should either party be in default of this agreement, the non-defaulting party shall be entitled to attorney fees and costs incurred in the pursuit of the default in addition to whatever other remedies that party may be entitled.

11. Integration: This agreement contains the entire agreement and understanding of the parties, and supersedes all prior negotiations, correspondence, understandings, and agreements whether written or verbal.

12. Binding effect: This agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties.

IN WITNESS WHEREOF, the parties hereto have hereunto subscribed their names, the day and year in this agreement first above written.

"THE CITY OF JEROME"

CITY OF JEROME, IDAHO

By: Dennis Moore
DENNIS MOORE, Mayor

ATTEST:

Kathy Miller
KATHY MILLER, City Clerk

"JEROME CHEESE COMPANY"

PRESIDENT

SECRETARY

STATE OF IDAHO)
)ss.
County of Jerome)

On this 10th day of April, 1998, before me, the undersigned, a Notary Public in and for said County and State, personally appeared DENNIS MOORE and KATHY MILLER, the Mayor and City Clerk, respectively, of the CITY OF JEROME, IDAHO, known to me to be such officers of the Corporation whose name is subscribed to the within and foregoing instrument, and who acknowledged to me that they executed the same on behalf of said Corporation.

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

NOTARY PUBLIC for Idaho
Residing at Jerome, Idaho
Commission Expires: 5-23-01

STATE OF IDAHO)
)ss.
County of Jerome)

On this 3 day of April, 1998, before me, the undersigned, a Notary Public in and for said County and State, personally appeared Mark Davis and Jon Davis, the President and Secretary, respectively, of JEROME CHEESE COMPANY, known to me to be such officers of the Corporation whose name is subscribed to the within and foregoing instrument, and who acknowledged to me that they executed the same on behalf of said Corporation.

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

NOTARY PUBLIC for Idaho
Residing at Jerome, Idaho
Commission Expires: 3/13/2003

ROBERT E. WILLIAMS
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Idaho State Bar No. 4413

Attorneys for City of Jerome

RECEIVED
JUL 19 1999
Department of Water Resources
Southern Region

BEFORE THE IDAHO STATE DEPARTMENT OF WATER RESOURCES

In Re Application for Transfer of Jerome Cheese Company	Transfer Nos. 5401 and 5436 **AFFIDAVIT OF DEBORAH COFFEL**

STATE OF IDAHO)
)
County of Jerome)

DEBORAH COFFEL, being first duly sworn, hereby deposes and says:

1. I am one of the secretaries for Fredericksen, Williams & Meservy.

2. One of my duties is to open the mail on the mornings our receptionist is unavailable to do so and place a stamped, dated receipt on each item of mail. The Opposition of

ORIGINAL

RECEIVED
JUL 2 0 1999
Department of Water Resources

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

BEFORE THE
IDAHO DEPARTMENT OF WATER RESOURCES

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

Jerome Cheese,
Applicant

William K. Chisholm,
Lee J. Halper,
Protestants

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

Jerome Cheese,
Applicant

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

APPLICANT'S RESPONSE TO CITY OF JEROME'S MOTION FOR RECONSIDERATION

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COMES NOW Applicant Davisco Foods International, Inc., dba Jerome Cheese, ("Applicant" or "Jerome Cheese") by and through its attorneys, and respectfully submits this response to the City of Jerome's ("City") *Motion for Reconsideration of Order Denying Petition for Intervention and Alternatively, Motion To File a Late Protest*, which the Applicant received only yesterday.[1]

The Applicant opposes the City's motion for reconsideration and urges its rejection for the reasons set forth below. Each of the reasons apply equally to the two forms of relief sought by the City (intervention and late protest).

I. THE CITY'S PETITION TO INTERVENE IS UNTIMELY.

The City alleges in paragraph 3 of its motion that its petition to intervene is timely, despite its late filing, because no prehearing conference was held. This ignores the fact that the upcoming hearing is a consolidated hearing including a case in which a prehearing conference was held (No. 5401). Obviously, a potential intervener takes the case as he finds it. Moreover, the fact that one of the two prehearing conferences was dispensed with simply reinforces the urgency of the expedited schedule to which the parties have agreed. This should not serve as a basis for allowing this tardy protest to be heard. Finally, regardless of when the petition was filed, the Department has ample

[1]Counsel for the City served the motion by regular mail on Friday, July 16 without any faxed or electronic copy or other advanced warning—despite the fact that the hearing is now just a week off.

authority under Administrative Rule 352 to deny the petition in order to protect the rights and interests of the parties and of the Department.

II. THE CITY'S CONTENTION THAT IT DID NOT TIMELY RECEIVE A COPY OF THE APPLICANT'S OPPOSITION TO THE CITY'S EARLIER MOTION TO INTERVENE IS A RED HERRING.

A. The Applicant's opposition was properly served on the same day it was filed with the Department.

The City contends in Paragraph 2 of its motion that it did not receive the Applicant's opposition until July 6, 1999—twenty-two days after it was mailed by the Applicant. The implication is that the certificate of service filed with the opposition was false. The certificate of service was not false. The Applicant submits herewith an affidavit from counsel's secretary stating that a copy of the opposition was properly deposited in the mail on June 14, 1999. See Exhibit A.

B. In any event, the City had actual knowledge of the Applicant's opposition to its motion to intervene.

Counsel for the City and for the Applicant have had numerous telephone discussions regarding the water transfer and other matters of concern. The Applicant's opposition to the City's intervention was well known to counsel for the City. These discussions culminated in a meeting between representatives of the City and the Applicant at the office of Applicant's counsel in Boise on June 25, 1999. This meeting, and the discussions which took place, are documented in the correspondence set out as Exhibits B and C.

C. The timing of the arrival of the opposition is irrelevant.

Although the tardy arrival of the opposition was not previously called to the attention of the counsel for the Applicant, nor was it documented by retention of the date-stamped envelope, we do not contest the City's claim that it did not receive the pleading for twenty-two days. The fact is that the issue is irrelevant.

Whether the Applicant's opposition was or was not delayed in the mail has no bearing whatsoever on whether the City should be permitted an untimely intervention or protest. That question turns on (1) justification for the City's tardiness, (2) whether the City has legitimate issues to raise which will not otherwise be adequately presented, and (3) prejudice to the other parties. None of these issues are remotely affected by the purported delay in the arrival of the Applicant's opposition statement. If the City had received its copy on June 14 rather than July 6, nothing would be any different. The fact remains: The City missed the deadline for filing a protest, and nowhere in its motion for reconsideration has it presented an adequate justification therefore.

III. THE CITY'S ALLEGATIONS REGARDING THE MAYOR AND THE CITY COUNSEL ARE RED HERRINGS.

Instead of offering a proper basis for its tardiness in submitting a protest of the proposed water rights, counsel for the City have offered an unfounded, libelous suggestion of improper behavior by the City's own Mayor. Noting that the Mayor is also an employee of Jerome Cheese, which is true, the City asserts its unsubstantiated "belief" in Paragraph 15 that the Mayor is in some way responsible for the City's tardiness in

filing a protest. The thinly veiled suggestion is that some sort of fraud has occurred. The Applicant denies knowledge any improper conduct. For the City's counsel to offer such a suggestion in a pleading before the Department without a shred of evidence reflects poorly on the City.

In any event, all of the allegations regarding disagreements between the Mayor and the City Council constitute no more than an embarrassing public display of the City's internal problems. The fact that the City's internal lines of communication are so confused that it cannot speak with one voice is hardly a justification for late intervention. To the contrary, it is a harbinger of the confusion which would result from allowing this internally conflicted public entity into the proceeding on the eve of the hearing.

IV. THE CITY'S INTERVENTION IS NOT REQUIRED FOR INFORMATIONAL PURPOSES.

The City states repeatedly in its original petition that the principal purpose of its late intervention is to obtain the necessary information to enable it to understand if there really is a problem or not. This function can and is being served outside of the hearing process. The Applicant has bent over backward to provide necessary information and to address the City's concerns. As mentioned above, counsel for the City and for the Applicant, along with their technical consultants, met at the offices of the Applicant's counsel on June 25, 1999.

Indeed, these discussions, which are ongoing, have been quite effective in identifying and resolving issues between the City and the Applicant. See correspondence

set out in Exhibits B and C.

V. THE REAL DISPUTE BETWEEN THE CITY AND THE APPLICANT IS NOT OVER WATER, BUT OVER ANNEXATION, AN ISSUE WHICH HAS NOTHING TO DO WITH THESE WATER TRANSFERS.

The City contends in paragraph 14 of its motion that its sole motive for opposing the Applicant's water right transfers is to protect the larger public interest. This is hardly a fair and complete description of the situation. In prior discussions the City has been quite clear, indeed quite blunt, in describing the linkage between the Applicant's ongoing fight against annexation and the City's decision to protest the Applicant's water rights. See correspondence contained in Exhibits B and C. The City may be entitled to engage in this sort of blackmail, or it may not. That will be decided by another court.

The point here is that this dispute between the City and the Applicant is no matter of concern to the Department, and most certainly should not form a basis for muddling the Department's public interest evaluation of the transfer applications.

VI. THE CITY'S ALLEGATIONS REGARDING THE SUBMISSION OF DRAWINGS ARE A RED HERRING.

The City acknowledges in paragraph 9 of its motion that the Applicant has agreed to provide engineering drawings requested by the City. The City alleges in the same paragraph, however, that the drawing provided last week was of a "scale too small to be legible." Two points.

First, the drawing referenced here is the "Site Plan" for the cheese plant. The copy submitted to the City is of exactly the same scale as employed by Jerome Cheese and its

engineers. There was no reduction in size nor in quality of print. The Applicant has never experienced any difficulty in reading the Site Plan.

Second, the Site Plan does not have anything to do with the proposed water transfers. It was submitted to the City in response to a request on an unrelated matter.

Third, the drawings requested by the City which relate to the proposed water supply system to be served by the transferred rights will be submitted to the City this afternoon. They have been available to the City since last Wednesday, immediately after they were approved by DEQ. However, the City Engineer failed to appear for a meeting in which the Applicant was to deliver these drawings last week, and the meeting had to be rescheduled for today. That meeting has now occurred, and the Applicant was advised by the City Engineer that its technical concerns appear to have been resolved.

The bottom line is that the entire discussion about drawings is a non-issue. The Applicant has responded fully and in a timely manner to all reasonable requests of the City, and will continue to do so regardless of whether the City is made a party to this proceeding.

VII. THE CITY'S "ENLARGEMENT" ALLEGATION IS A RED HERRING.

The City alleges in paragraphs 12 and 13 of its motion that it is concerned with the issue of "enlargement." However, the discussion accompanying the allegation evidences that this is a non-issue. The City complains that the Applicant already has access to City water. If the Applicant it obtains its own independent water supply through the approval

of the pending transfers, the City contends this may constitute an "enlargement." Apparently, the City is concerned that the Applicant would then have twice as much water available to it.

This is a misuse of the term "enlargement" in the context of the Prior Appropriation Doctrine in Idaho. Obviously, if the Applicant will not be allowed to apply the full quantity of both the private water and the city water to the same use. Nor would there be any reason on earth to do so. This unlikely scenario, for which the City offers no basis other than is bald assertion of concern, has nothing to do with "enlargement" as the term is employed by those familiar with Idaho Water Law.[2]

VIII. THE CITY'S PURPORTED CONCERN ABOUT CROSS CONNECTIONS IS RED HERRINGS.

In its motion, the City repeats again in paragraph 9 its alleged concern about cross connections. The City and the Applicant have had several discussions on this point. In response to concerns raised by the City, the Applicant made its engineers available to the City (at the Applicant's expense) in order to address any and all technical concerns. These concerns have now been resolved, as the City acknowledged in its meeting in Boise on June 25, 1999. See correspondence in Exhibits B and C. For counsel to continue to

[2]The enlargement addresses the extent of utilization of the water right to be transferred, and is directed at ensuring that additional strain will not be put on that right, for instance, through expanding the acreage. This has nothing whatsoever ever to do with the City's alleged concern about the Applicant having a double supply of water.

raise this issue in pleadings to the Department reflects a disingenuous approach to this proceeding.

IX. THE CITY'S CONCERNS ABOUT WHAT HAPPENS TO ITS EXCESS WATER SUPPLY ARE NOT A PROPER ISSUE FOR THE DEPARTMENT IN THIS PROCEEDING.

Obviously, if the transfers are approved and the Applicant develops its own supply, it will no longer utilize the city water. Indeed, the ability to get off city water is one of the objectives of the transfer. The question then is what the City does with water it previously supplied to the Applicant.

If the City does not take proper steps to find another user, its water rights could be subject to partial forfeiture. On the other hand, both the legislature and the common law have provided substantial leeway for municipal suppliers. See Exhibit D. The City would be well advised to take appropriate actions to bring its water rights with the statutory protections afforded it. However, it need not seek to block these pending transfer applications in order to protect its supply.

X. THE CITY'S CONCERNS ABOUT WATERWATER TREATMENT ARE A RED HERRING.

The City has identified its concern over treatment of wastewater as a basis for its late intervention. There is nothing new here to justify the City's tardy action.

Moreover, there is nothing at all to this issue. The City currently treats the Applicant's wastewater. The City and the Applicant are currently negotiating a new contract. The City's alleged concern that the negotiations will break down, and its need to know what the Applicant will do with the wastewater in that event, is based on the

wildest speculation and, in any event, has nothing to do with this water right transfer proceeding. Essentially, the City is asking the Department to strengthen the City's hand in the negotiation process by conducting a hearing on the Applicant's alternatives to City treatment. This has nothing to do with the Department's public interest review and constitutes an abuse of process.

XI. THE CITY HAS FAILED TO IDENTIFY A SINGLE RELEVANT ISSUE FOR THE DEPARTMENT.

In all of its filings with the Department, including its latest motion, the City has raised numerous red herrings, but not a single issue properly within the scope of the Department for the upcoming hearing. By its own admission, the City has no concern over injury or other traditional water rights issues. The City's informational needs have been satisfied. The City's earlier concerns about cross-contamination of its water supply have been fully addressed and resolved outside the hearing process. Its concern about "enlargement" is misplaced, and has nothing to do with enlargement as the Department uses the term. Its concern over wastewater treatment has no serious foundation and, in any event, falls beyond the scope of proper concerns for the Department. In short, despite all the words spoken, there is no substance whatsoever backing the City's petition for intervention. The petition is really an effort to leverage other issues between the parties, which have nothing to do with the water right transfers.

XII. THE APPLICANT WILL SUFFER PREJUDICE IF THE CITY IS ALLOWED TO INTERVENE LATE.

The upcoming consolidated hearing has been scheduled on an expedited basis. The Department is fully aware of the difficulty the parties had in coordinating the scheduling to enable it to move forward. The parties have prepared for the hearing on the basis of the pleadings, discovery, and discussions which have taken place among them. Allowing the City to intervene at this late date, without opportunity for discovery, proper articulation of issues, or other preparation would severely prejudice the Applicant.

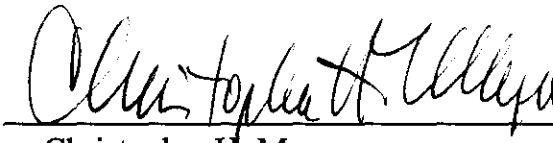
Moreover, the City's motion for reconsideration is itself indicative of the pointless complexity which will be introduced into this case if City is allowed to intervene late. That motion consists of the recitation of one non-issue after another. Many have been shrouded with thinly veiled and entirely unsupported allegations of impropriety. Each has required the Applicant to engage in a careful response to set the record straight. In short, the City's approach to date has not been to illuminate real issues, but to obfuscate and to derail the proceedings.

If the motion is indicative of the way the City's counsel intends to litigate this case, and we think it is, then the tardy admission of the City to this proceeding can be expected to substantially delay the proceedings with vigorous battles over side issues.

For each of these reasons, the Applicant urges that the City's motion be denied.

Dated this 20th day of July, 1999.

GIVENS PURSLEY LLP

By 
Christopher H. Meyer

Attorneys for Applicant
Jerome Cheese

RECEIVED
JUL 23 2003

CERTIFICATE OF SERVICE

I hereby certify that on July 20, 1999 I caused to be served a true and correct copy of the foregoing to each of the persons named below by the method indicated below each of their names.

Patrick D. Brown, Esq.
Parker, Warr & Brown
812 Shoshone Street East
Twin Falls, ID 83301
☑US Mail ☐Email ☑Fax ☐Hand ☐Overnight

Mr. William K. Chisholm
19073 E. Hwy. 30
Buhl, ID 83316
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Original to:
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Statehouse Mail
Boise, ID 83720-9000
☐US Mail ☐Email ☐Fax ☑Hand ☐Overnight

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Mr. Michael Ihler
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Ms. Darcy Thornborrow
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Buhl, ID 83316
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Robert E. Williams, Esq.
Fredericksen, Williams & Meservy
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P.O. Box 168
Jerome, ID 83338
☑US Mail ☐Email ☑Fax ☐Hand ☐Overnight

Christopher H. Meyer

EXHIBIT A

Affidavit of Barbara Feasel

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

BEFORE THE
IDAHO DEPARTMENT OF WATER RESOURCES

In the Matter of Application For Transfer Nos. 5401(Water Right No. X36-07337E) Jerome Cheese, Applicant William K. Chisholm, Lee J. Halper, Protestants	**AFFIDAVIT OF BARBARA A. FEASEL**
In the Matter of Application For Transfer Nos. 5436 (Water Right No. 35-08606) Jerome Cheese, Applicant William K. Chisholm, Lee J. Halper, Michael Ihler, Darcy Thornborrow, Protestants	

STATE OF IDAHO)
) ss:
COUNTY OF ADA)

BARBARA A. FEASEL, being first duly sworn on oath, deposes and says:

1. I am secretary to Christopher H. Meyer of Givens Pursley, LLP, and make this affidavit based upon my personal knowledge.

2. On June 14, 1999, I photocopied Applicant's Opposition to City of Jerome's Petition for Intervention for mailing and filing.

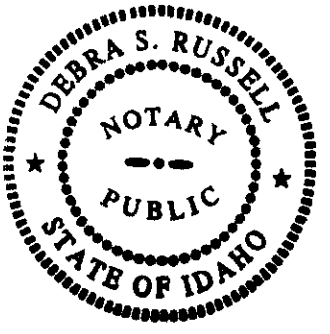
3. On June 14, 1999, I placed said photocopies in envelopes addressed to the individuals set forth on the Certificate of Service on page 5 of the aforementioned Opposition, and placed the envelopes marked for delivery by U.S. Mail in the mail bin for postage and delivery to the post office.

4. I observed the firm mail clerk place the proper amount of postage on the envelopes.

5. The firm mail clerk advised me that he placed the mail in the mail drop of the U.S. Post Office, 13th Street location, at approximately 5:45 p.m. on June 14, 1999.

Barbara A. Feasel

SUBSCRIBED AND SWORN TO before me this 20th day of July, 1999.



Debra S. Russell
Notary Public for Idaho
Residing at Boise, Idaho
Commission expires: 8-11-2003

EXHIBIT B

Letter from Chris Meyer to Rob Williams

GIVENS PURSLEY LLP

FILE COPY

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

DIRECT DIAL: (208) 388-1236
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Jeffrey C. Fereday
L. W. Grant III
Richard W. Jankowski
Kari T. Klein
David R. Lombardi

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

Conley Ward
Stephanie C. Westermeier
Robert B. White

Raymond D. Givens
James A. McClure
OF COUNSEL

July 9, 1999

Robert E. Williams, Esq.
Fredericksen, Williams & Meservy
117 S. Adams Street
P.O. Box 168
Jerome, ID 83338

Re: Jerome Cheese Company
Our File No. 5472-1

Dear Rob:

Thank you for taking the time to chat with Ed Miller and me yesterday afternoon. I am pleased to hear that you had a productive meeting with Rex Minchey of Jerome Cheese and my partner, Mike Creamer, on June 25, 1999 while I was away. It is good that we have the lines of communication open. I certainly hope that we manage to keep them that way. If there is anything that I may do in that regard, please do not hesitate to ask.

It appears that several points raised at the June 25 meeting require a follow up.

First, I understand that you and the others at the June 25 meeting were successful in narrowing the scope of issues to be addressed in the water right conference. Specifically, I understand that concerns that City may have had regarding the following issues have been addressed, and that they are no longer matters of concern:

1. The City is not concerned that the proposed transfers constitute an enlargement or will injure other water rights.

2. The City does not contend that the proposed transfers will impair the City's water delivery system.

3. Specifically, pending review of engineering drawings by the City Engineer, the City is satisfied that the proposed transfers will not violate cross-connection requirements or impair the functioning of fire protection systems.

If any of these statements are inaccurate or incomplete, or become so in the future, please let me know at once. Otherwise, my client will rely on the fact that these are not issues which the City intends to press at the upcoming conference. (Obviously, we could go through a formal discovery process to pin this down, but given your reputation for integrity, I do not think that necessary.)

Second, I understand that the City would like to have access to additional engineering drawings for the proposed water supply system. Again, we should be able to accommodate all reasonable requests outside the formal discovery process. I will ask Rex Minchey to provide these to Jon Cecil and Scott Bybee . As you know, Jerome Cheese is not in a position to share schematics or drawings of its water circuit inside the plant other than as necessary to establish its compliance with cross-connection requirements for the process water and fire protection supplies. However, I trust that Jerome Cheese and the City will be able to work around such limitations to their mutual satisfaction. If problems or disagreements arise in this regard, please call this to my attention.

Third, I understand that the City requested Jerome Cheese to issue a written statement assuring the City that it will not use the fact that it has its own water supply as a basis for opposing annexation. We cannot provide this. The Company is firmly opposed to any effort to annex its property, and views such as a violation of its understanding with the City. The Company intends to vigorously oppose annexation, and will employ every lawful means available to it.

Fourth, I would not be candid with you if I did not convey that the Company views the City's opposition to its water right transfers as an improper and unlawful interference with its property rights. I have advised the Company that City has no proper basis to oppose the water rights transfer, and that the City may be subject to an action for recovery of attorney fees. In this regard, I call your attention in particular to Idaho Code § 12-117 which specifically provides for recovery of attorney fees in cases in which a company finds itself in litigation against a state agency, a city, a county, or other taxing authority. Because this provision is aimed specifically at governmental bodies, the city would have no defense of sovereign immunity.

Moreover, unlike other attorney fee recovery provisions, it applies in both administrative and civil proceedings. Thus, Jerome Cheese potentially could recover its attorney fees, as well as expert witness and consultant expenses, incurred before the Idaho Department of Water Resources.

In closing, let me reiterate my belief that keeping the lines of communication open will benefit both the City and the Company. Please do not hesitate to contact me if I may assist in that regard.

Sincerely,

Christopher H. Meyer

cc: Jon Davis, Jerome Cheese Company
J. Rex Minchey, Jerome Cheese Company
Charles E. Brockway, Brockway Engineering
Paul K. Hunter, EnviroSearch International
L. Edward Miller, Givens Pursley
Michael C. Creamer, Givens Pursley
Gary G. Allen, Givens Pursley

CHM:baf
S:\Clients\5472\1\Corr\1999-07-09 CHM Ltr to R.Williams - Re follow up on meeting.wpd

EXHIBIT C

Letter from Rob Williams to Chris Meyer

FREDERICKSEN, WILLIAMS & MESERVY
ATTORNEYS AT LAW
117 South Adams Street
P. O. Box 168
Jerome, Idaho 83338-0168

RECEIVED
JUL 19 1999
Givens Pursley, LLP



EUGENE D. FREDERICKSEN
ROBERT E. WILLIAMS III
JAMES C. MESERVY

Telephone: (208) 324-2303
Telecopier: (208) 324-3135
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July 16, 1999

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

Via Fax to 388-1201

Re: Jerome Cheese Company Application/City of Jerome

Dear Chris:

This letter will respond to your letter of July 9 regarding Jerome Cheese Company.

By now you realize that the City has hired Pat Brown of Twin Falls to assist it with respect to water rights involving the current applications for transfer by Jerome Cheese Company. You should also have, or will shortly have the City's Motion for a reconsideration of the denial of the Petition For Intervention and alternatively the right to file a late protest.

I also want to respond to some of the issues raised in your July 9 letter. It is true that the City does not believe that the transfer as now proposed will enlarge existing rights, subject to the review of engineering plans for confirmation. The City cannot finally agree that its water rights will not be injured without the opportunity to review the plans which were promised. The drawings delivered to the City on Wednesday are of a scale too small to read. I understand that larger scale drawings will be provided early the week of the 19th so the required review can take place. If Jerome Cheese will provide those plans, I am confident that the review can take place prior to the hearing date and provide a way for those concerns to be eliminated.

The City has continued to study this matter and the potential affects upon the City of Jerome after the plans of Jerome Cheese were set forth at the June 25, 1999, meeting. New concerns of the City are (a) what the Jerome Cheese Company will propose regarding the disposition of its wastewater if negotiations with the City of Jerome are unsuccessful to renew or extend the wastewater treatment agreement now in force; and (b) what will happen to the City's water formerly used by Jerome Cheese Company, a potential "enlargement" issue.

I have some correspondence from Mark Davis making some veiled reference to a contract of short duration, if the wastewater treatment contract is renewed or extended. The City does not know what this means, but recognizes that the wastewater from the plant will have to go somewhere. If the City of Jerome does not treat the wastewater, either by the wish of Jerome Cheese or by the

Fax to Client, Chm, Mtg, Consultants 7-19-99

fact that Jerome Cheese Company will not agree to conditions desired by the City of Jerome for treatment of the wastewater, the City has a direct interest in ascertaining what lawful means for the disposal of the wastewater Jerome Cheese Company will employ.

As suggested in the materials in the motion for reconsideration, the City continues to have grave concern over Mayor Dennis Moore's letter to the hearing officer regarding the transfer, which communication was made without the knowledge or consent of other City officials, and was, in fact, in direct contravention of the wishes of a majority of the Council.

The City respectfully disagrees with your conclusion that it has no proper basis to oppose the pending water right transfer. Indeed, it appears to us that there could not be any more obvious example of a concern relating to the "public interest" as defined by Idaho Code than the type of concerns that the City of Jerome has expressed here. The concerns over "enlargement" are also real. If you still believe that the City's concerns over its abilities to deliver safe water to the rest of its patrons , concerns over what happens to the water it used to provide Jerome Cheese Company, and concerns over the ability of Jerome Cheese Company to properly treat its wastewater are not "real" concerns, I would appreciate your elaboration.

Please advise me as to when and where the requested plans will be available so that City personnel and Scott Bybee, the City's engineer can review them. If you have information regarding the matters I have raised by this letter concerning wastewater treatment, the City would be happy to review that information as well in an attempt to resolve its concerns.

Very truly yours,

FREDERICKSEN, WILLIAMS & MESERVY

ROBERT E. WILLIAMS

REW/mf

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EXHIBIT D

Article on Municipal Water Rights

Idaho Statute Gives Municipalities Added Flexibility in Acquiring Water Rights for Future Needs

Idaho State Bar
Coeur d'Alene, Idaho
July 15, 1999

By

Christopher H. Meyer, Esq.

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Idaho Statute Gives Municipalities Added Flexibility in Acquiring Water Rights for Future Needs

By

Christopher H. Meyer, Esq.

I. THE LINE BETWEEN BENEFICIAL USE AND SPECULATION

All water users, from the family farmer to the industrial giant, have plans for the future, it seems. Water is often a part of those plans. The Prior Appropriation Doctrine is well suited to the task of assisting the entrepreneur in expanding his or her panoply of water rights to serve a growing enterprise. It must be said, however, that these new uses are not accommodated under the Prior Appropriation Doctrine without some tension.

The reason is this. While the Prior Appropriation Doctrine has long been an engine of growth in the West, it has just as long been the enemy of speculation.

Under the Prior Appropriation Doctrine, one cannot claim a right to use water one in fact does not use. With limited exceptions, a person cannot tie up quantities of water for development or use at some future time, thus preventing appropriations by others who can and will develop today.

The basis for this anti-speculation feature of the doctrine is the same as the foundation of the doctrine itself: water rights are based on beneficial use of a public resource that remains the property of the public. Beneficial use is the basis, the measure and the limit of the right.

This is not to say that no speculative scheme in the West ever involved water rights. However, the water right itself ultimately can be recognized only on the basis of bona fide use, and cannot be maintained indefinitely as a "paper" entitlement.

Hence, from the start, the Prior Appropriation Doctrine has recognized the lawful rights of those who apply water to beneficial use, and has denied any legal protection to those who would hold water for speculative purposes. This distinction between need and speculation has remained viable over time, and rules have developed to define which is which.

In the early days, before permit systems were established in Idaho and virtually every other Western state, a water right did not come into existence until actual diversion to beneficial use occurred.[1] The statutory permit system provided some critical leeway to the developer of a new right. Rather than engage in a risky race to develop a water supply, the user could obtain in advance a water right permit which secured the quantity and priority of the water right sought. With permit in hand, the user then could obtain financing and proceed to construction of the diversion and delivery system with some confidence that water would be available. Once the project was completed and in use, a license would be awarded, serving as *prima facie* evidence of the actual diversion and application to beneficial use.[2]

In Idaho, the user might spend five years getting from permit to license, with another five year extension upon showing of need; in specified circumstances, further extensions might be obtained.[3] In most cases, that has proven sufficient time to design, fund and construct a water project, at least for the typical Idaho irrigation project. The system has not been entirely satisfactory, however, for municipal suppliers.

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[1] "The procedure for appropriating water contained in the act of 1881, providing that an intending appropriator should post a notice at the point of diversion and record the same, was replaced in 1903 by the present procedure which places the regulation of appropriation of waters under the jurisdiction of [what is now Idaho Department of Water Resources]." Wells A. Hutchins, *The Idaho Law of Water Rights*, 5 Idaho L. Rev. 1, 21 (1968). Except for certain small domestic wells, the permit/license process is now mandatory in Idaho. Idaho Code §§ 42-103, 42-201 (for surface water diversions, effective May 19, 1971) and Idaho Code § 42-229 (for ground water diversions, effective March 25, 1963). Implementing regulations are found at IDAPA 37.03.08 § 035.01.a. (may not "commence the construction of any project works" until permit application has been approved).

[2] Once the project is completed and the water is put to beneficial use, the permittee is entitled to receive a license for that amount of water with a priority date relating back to the date of the application for the permit. Idaho Code § 42-219.

[3] Idaho Code §§ 42-204, 42-218, 42-128(a).

Municipal suppliers have argued that they shoulder an obligation unlike that of other water users. The municipal supplier (whether that be a city or a corporation supplying a city) is bound to serve all those customers who find it desirable to locate within the municipality. Cities point out that they cannot wait for the future to unfold. Although uncertainty is inherent in growth projections, practical necessity demands that cities lay the foundation today to meet the water needs of the coming decades. Surface and underground supplies must be identified and acquired. Diversion and storage systems must be put in place. Delivery systems must be expanded and treatment plants constructed.

The bottom line is that the planning horizon for these endeavors may be longer than five or ten years. It is economically, if not physically, impossible for most cities simply to add on additional supply as needed in five or ten year increments. When pipe is laid, wells are drilled, and treatment systems are engineered, cities contend, these systems sensibly must be sized for many years of future growth. But if that need is more than ten years out, what becomes of the water right?

The courts of Idaho and other Western states long ago have addressed this question. Their answer has been consistent. They have recognized the unique obligations of municipalities and have treated them differently than other water users. The seminal statement comes from the Colorado Supreme Court, writing in 1939:

> The concern of the city is to assure an adequate supply to the public which it serves. In establishing a beneficial use of water under such circumstances the factors are not as simple and are more numerous than the application of water to 160 acres of land for agricultural purposes. A specified tract of land does not increase in size, but populations do, and in short periods of time. With that flexibility in mind, it is not speculation but the highest prudence on the part of the city to obtain appropriations of water that will satisfy the needs resulting from a normal increase in population within a reasonable period of time.[4]

This quotation demonstrates that the core of the debate over the right

[4] *City and County of Denver v. Sheriff*, 96 P.2d 836, 841 (Colo. 1939) (emphasis supplied).

of municipalities to hold water for future growth is whether or not this practice constitutes "beneficial use" on the one hand or "speculation" on the other. That is, does the acquisition of water rights beyond the usual five or ten year time frame constitute prudence or hoarding? The Growing Communities Doctrine[5] recognizes that long term planning by municipalities, under proper circumstances, may be prudent, necessary and lawful.

In a sense, the Growing Communities Doctrine is not that much of a departure from the norm. Indeed, one might argue that the idea of a city designing a delivery system sized to accommodate future growth is similar in concept to the idea of storing water in a reservoir for use during a future drought. That drought may not come for many years, but no one would deny the benefit derived today simply from knowing that water will be available in the event of drought. Thus, it is undisputed that the storage of water for use in time of future shortage constitutes a current "beneficial use."[6] The Growing Communities Doctrine is simply a recognition of the fact that Idaho's cities derive a substantial and tangible benefit today from securing a water supply sufficient to satisfy reasonably foreseeable needs. Without such ability, cities argue, they would be hard pressed to attract desirable new industries and manage sensibly for growth.

II. JUDICIAL RECOGNITION OF THE GROWING COMMUNITIES DOCTRINE IN IDAHO

Two Idaho cases and one federal case applying Idaho law have addressed the question of whether cities may obtain water rights of sufficient quantity to meet future population growth. In each case, the court squarely ruled that such water rights may be obtained.

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[5] I employ the phrase "Growing Communities Doctrine" to capture the essential points of the case law. The phrase has now been picked up by the Washington Supreme Court, *State of Washington, Dept. of Ecology v. Theodoratus*, 135 Wash.2d 582, 957 P.2d 1241 (1998). Although this shorthand description has not yet been employed by the Idaho Supreme Court, and differs somewhat from the "Great and Growing Cities Doctrine" which has taken hold in Colorado, I think it captures the idea. The doctrine plainly applies to all growing communities, large and small, not just to great cities. For instance, in *Village of Peck v. Denison*, 92 Idaho 747, 751, 450 P.2d 310, 314 (1969), the doctrine was applied to a community of 200 inhabitants.

[6] *Waters and Water Rights*, § 12.03(c)(2) at 108 (Robert E. Beck ed., The Michie Company 1991); Samuel C. Wiel, *Water Rights in the Western States* § 378 at p. 410 (1911); 45 Am. Jur. 2d *Irrigation* § 38 (1969).

The first case was *City of Pocatello v. Murray*.[7] In this case, the City of Pocatello granted a franchise to Murray and his associates to provide water to the city. The city complained that while Murray had delivered some water from Mink Creek, he had not obtained the entire supply physically available in the creek. The federal court (applying Idaho law) found that Murray had indeed failed to fulfil his obligation under the contract. The court rejected Murray's argument that it was against public policy for the city to appropriate more water than was then needed. The court declared that the leeway afforded to agricultural users "should and doubtless would, be applied with even greater liberality to the superior and more elastic needs of a growing municipality."[8]

In *Beus v. City of Soda Springs*,[9] the court upheld the right of the City of Soda Springs to purchase water rights from agricultural users and hold them for future municipal needs. The court went on to hold that such water need not be applied to irrigation in the meantime in order to avoid forfeiture.[10] "To require that would amount to nullifying the power granted to a municipality to acquire and hold water for future needs—an absolute necessity of life and existence for a municipality."[11]

In the more recent case of *Village of Peck v. Denison*,[12] the court upheld

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[7] *City of Pocatello v. Murray*, 206 F. 72, 80 (D. Idaho 1913), *aff'd, Murray v. City of Pocatello*, 214 F. 214 (9th Cir. 1914). The appeals court affirmed on the more narrow basis of the construction of the municipal ordinance. However, the appeals court noted that one of the purposes of the water supply agreement between the city and defendants was to provide "as well for their future use." 214 F. at 220.

[8] *Pocatello*, 206 F. at 80.

[9] *Beus v. City of Soda Springs*, 62 Idaho 1, 107 P.2d 151 (1940).

[10] In support of its decision, the Idaho court quoted from a Wyoming case, *Holt v. Cheyenne*, 137 P. 876 (1914):

> [T]he Supreme Court of Wyoming had before it . . . the identical question presented in this case. The court held: "A city's right to appropriate the waters of a stream is not limited to the needs of its citizens at the time of the adjudication of its rights, but is entitled to appropriate for the probable future demands of its population."
>
> The court then reviewed numerous authorities holding that property may be held by a municipality for its future growth and development without being subject to adverse claims of others, and then continues: "Such, we think, is the better reasoning, and is supported by the great weight of authority and to which many courts have in later cases acceded, although a contrary doctrine has been announced in earlier decisions."

Beus, 62 Idaho at 6, 107 P.2d at 154 (this quotation, which *Beus* attributed to *Holt*, is actually from the headnote to *Holt*).

[11] *Beus*, 62 Idaho at 7, 107 P.2d at 154.

[12] *Village of Peck v. Denison*, 92 Idaho 747, 450 P.2d 310 (1969).

the right of the village to obtain an unquantified water right for "all the flow" from a particular source. Whether the water was needed for current or future needs is somewhat unclear from the decision. However, the court noted in a footnote that:

> [A]lthough the Village of Peck became a municipality only after the events giving rise to this litigation, we would have found it difficult not to allow the appropriation of some excess water (had there been any in fact) under I.C. § 50-323 and its predecessors and Beus v. City of Soda Springs, 62 Idaho 1, 107 P.2d 151 (1940); see Hutchins, op. cit. at p. 44 (municipal use of water).[13]

The court in *Village of Peck v. Denison* cites an article published a year earlier by the distinguished water law scholar, Wells A. Hutchins.[14] Mr. Hutchins concluded that Idaho law does recognize water rights for future municipal growth:

> [A] city is not limited in the amount of its appropriation to the needs of its citizens at the time of adjudication of its water right, but may dispose of and apply the surplus water to beneficial use up to the amount of its application.[15]

In sum, Idaho case law consistently has recognized and accommodated the special burdens on municipal providers of water. This body of law is consistent with that of cases and statutes throughout the West.[16]

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[13] *Village of Peck v. Denison*, 92 Idaho at 751, n.4, 450 P.2d at 314, n.4.

[14] Wells A. Hutchins, *The Idaho Law of Water Rights*, 5 Idaho L. Rev. 1 (1968).

[15] Hutchins at 44, n. 211.

[16] Cases:
Holt v. Cheyenne, 137 P. 876 (1914); *City and County of Denver v. Sheriff*, 96 P.2d 836 (Colo 1939); *City and County of Denver v. Northern Colorado Water Conservancy Dist.*, 276 P.2d 992 (1954); *Metropolitan Suburban Water Users Ass'n v. Colorado River Water Conservation Dist.*, 365 P.2d 273 (Colo. 1961), *rev'd on other grounds sub nom., Denver v. Colorado Water River Conservation Dist.*, 696 P.2d 730 (Colo. 1985); *Colorado River Water Conservation Dist. v. Vidler Tunnel Water Co.*, 594 P.2d 566 (Colo. 1979); *Rocky Mountain Power Co. v. Colorado River Water Conservation Dist.*, 646 P.2d 383 (Colo. 1982); *State v. Crider*, 431 P.2d 45 (N.M. 1967); *State ex rel. State Engineer v. Rio Rancho Estates, Inc.*, 624 P.2d 502 (N.M. 1981); *In re the Application of Plains Electric Generation and Transmission Coop., Inc.*, 750 P.2d 475 (N.M. App. 1988); *Jicarilla Apache Tribe v. United States*, 657 F.2d 1126 (10th Cir. 1981); *Weaver v. Eureka Lake Co.*, 15 Cal. 271 (1860); *City of Beaumont v. Beaumont*

III. IDAHO'S 1996 CODIFICATION OF THE DOCTRINE

In 1996, the Idaho Legislature codified the Growing Communities Doctrine and established specific procedures and limitations governing a municipality's ability to acquire water rights (by appropriation or transfer) for long term growth.[17] In short, the legislature affirmed the doctrine's role in Idaho water law, but placed clear sideboards on how it is to be applied.

The legislature recognized that it was not writing on a blank slate and specifically recognized and embraced the common law doctrine of special treatment for municipalities:

> The appropriation doctrine as applied throughout the western states provides flexibility for municipal providers to obtain and hold water rights needed to assure an adequate water supply for reasonably anticipated future needs. While this concept is recognized in Idaho case law, it should be further described in statutes in order to guide the actions of the Department of Water Resources, water users and the courts, and to assure that the use of this concept is appropriately controlled. The legislation seeks to define and limit the authority of municipal water providers to develop and hold water rights for reasonably anticipated future needs and to allow water to be supplied to expanding service areas. This statute addresses future licensing of water rights for municipal purposes (including those

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Irrigation Dist., 42 Cal. Rptr. 859, 867 (Cal. App. 1965), *affirmed but opinion vacated by*, 63 Cal. 2d 291, 405 P.2d 377, 46 Cal. Rptr. 465 (1965).

Statutes:

Ariz. Rev. Stat. Ann. § 45-160; Cal. Water Code §§ 106.5, 1264 (Deering 1977); Nev. Rev. Stat. § 533.030(3); N.M. Stat. Ann. §§ 72-12-8, 72-1-9; Or. Rev. Stat. §§ 537.230(1), 537.410(2), 537.610(2)(a), 537.260(4); Utah Code Ann. § 73-1-4(3)(b)(iv); Utah Code Ann. § 73-3-12(1); Wash. Rev. Code § 90.03.260.

Commentary:

Frank J. Trelease, *Preferences to the Use of Water*, Rocky Mtn. L. Rev. 133, 138 (1955) (Obviously a water supply for a city must keep a step ahead of the needs of its inhabitants; a city cannot obtain water from day to day as demand increases.); *Waters and Water Rights*, § 14.03(a) at 170-71, § 48.03(c) (Robert E. Beck ed., The Michie Company 1991); Wells A. Hutchins, *The Idaho Law of Water Rights*, 5 Idaho L. Rev. 1, 44 (1968); Note, *Recent Developments in the El Paso/New Mexico Interstate Groundwater Controversy—The Constitutionality of New Mexico's Municipality Water Planning Statute*, 29 Nat. Resources J. 223, 229-30 (1989).

[17] Municipal Water Rights Act of 1996, 1996 Idaho Sess. Laws, ch. 297, codified at Idaho Code §§ 42-202, 42-202B, 42-217, 42-219, 42-222.

> currently permitted) as well as future changes in water rights to municipal purposes. The statute does not address those licensed and decreed water rights now held by municipal providers, and the legislation intends no change in the common law with respect to such rights. Municipalities would be required to provide information to describe their service area, to establish a reasonable planning horizon, and to show that the water rights are necessary for reasonably anticipated future needs.[18]

However, the 1996 Act is more than a codification. It contains several new concepts, and reflects a much more precise, regulatory interpretation of the doctrine. The structure of the new approach is reflected in several newly defined terms of art. They are contained in the following one-sentence summary of the statute: "Municipal providers" may secure water rights for "municipal purposes" of sufficient quantity to serve all "reasonably anticipated future needs" within an expanding "service area" during a specified "planning horizon."

I will address each of these terms of art, in turn. The first is "municipal providers."[19] The term is defined to include more than just cities. It encompasses water supplied by any unit of municipal, county or state government.[20] It also includes corporations and associations holding a franchise to supply water for municipal purposes.[21] The largest example of this is United Water Idaho which serves the Treasure Valley. Finally, the term includes corporations and associations supplying water for municipal purposes through a water supply system regulated as a "public water supply" under Idaho Code § 39-103(15).[22]

The term "municipal purposes" is broadly defined to include "residential, commercial, industrial, irrigation of parks and open space, and related purposes," but expressly excludes "water from geothermal sources for

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[18] Statement of Purpose, S.B. 1535 (1996 Municipal Water Rights Act, 1996 Idaho Sess. Laws, ch. 297).

[19] Idaho Code § 42-202B(3).

[20] Idaho Code §§ 42-202B(2), 42-202B(3)(a).

[21] Idaho Code § 42-202B(3)(b).

[22] Idaho Code § 42-202B(3)(c).

heating."[23] Thus, water rights for geothermal heating systems (which are common in Idaho) may be obtained only to meet current need. However, geothermal water used for non-heat purposes (such as drinking) does fall within the Act.

The "reasonably anticipated future needs" must be documented with "population and other planning data" by the municipal provider to the satisfaction of the Idaho Department of Water Resources ("IDWR").[24] Moreover, they must "not be inconsistent with comprehensive land use plans approved by each municipality" within the service area, and may not include "uses of water within areas overlapped by conflicting comprehensive land use plans."[25] This last requirement is a draconian measure designed to provide a stern incentive to municipalities to cooperate in planning efforts. To the extent two or more municipalities assert planning authority over the same area and develop fundamentally conflicting planning scenarios, no one may obtain a "future needs" water right for that overlapped area.[26] Of course, water rights may continue to be acquired to serve existing needs in such areas.

The Act contains no limit on the duration of the "planning horizon,"[27] but simply requires the IDWR to establish a reasonable period to fit the needs of the particular user. The Act also provides for substantial flexibility in the establishment of a "service area."[28] The area need not be limited to a city's corporate limits, and corresponds instead to the actual area served. This eliminates the requirement under prior law to describe the area outside of a

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[23] Idaho Code § 42-202B(4).

[24] Idaho Code § 42-202B(6).

[25] Idaho Code § 42-202B(6).

[26] The Act's prohibition on conflicting plans is directed at comprehensive plans adopted by cities and counties. It is not concerned with the plans of private water companies which meet the definition of municipal providers. Thus two competing water companies could have conflicting plans in the sense that each hoped in the future to serve a particular area, reflected in overlapping future "service area" descriptions. This, in itself, however, would not prohibit either of them from obtaining a future need water right to serve the disputed area—so long as the cities and counties in the area did not have conflicting comprehensive plans describing their plans for growth. On the other hand, while the prohibition against overlapping comprehensive plans does serve as a *per se* barrier, the Department of Water Resources would have discretion to take such conflicts into account in making its determination of whether the entity did indeed have a "reasonably anticipated future need" for the water.

[27] Idaho Code § 42-202B(5).

[28] Idaho Code § 42-202B(7).

city's corporate limits by metes and bounds. More significantly, the service area is not fixed, but includes "changes therein after the permit or license is issued."[29] This eliminates the need to initiate a formal change proceeding with the IDWR each time the area served by a municipality is expanded.

It bears emphasis that the Act does not create any automatic entitlement on the part of municipal providers to obtain water rights for future needs. Rather, the Act imposes on the Director of the IDWR the responsibility to determine the reasonableness of the applicant's asserted future requirements. No doubt, a body of administrative and judicial law will emerge over time establishing how much need an applicant must have and how well the applicant must demonstrate it.

The Act applies at both the permit and license stage, as well as to transfers of water rights to municipal use. The initial determination of the scope of the future needs and the duration of the planning horizon may be adjusted by the IDWR at the license stage where the user "proves up" the right. Transfers in Idaho do not entail a two stage process (as for permits and licenses). Consequently, the scope of the transferred water right is established just once, at the time of transfer.

The Act contains two strong anti-speculation provisions. The prohibition against "future need" rights for areas with overlapping and conflicting comprehensive plans already has been mentioned. In addition, the Act expressly prohibits the transfer of "future need" water rights by a municipal provider to a place of use outside the service area or to a new nature of use.[30] In other words, the statute recognizes that while a municipality is accorded extra leeway in holding water rights to meet long term future needs, the *quid pro quo* is that the municipal provider may not later decide to accept a "better offer" and trade away its water rights for cash or other consideration. In a sense, the legislature had determined to take away one stick from the property owner's bundle of rights (free transferability) in recognition of the fact that municipal suppliers hold a stick which other water right holders do not (the right to hold water rights "unused" for long term future needs).

These provisions were added, by the way, in order to avoid the spread of the "Colorado phenomenon" to Idaho. Colorado's common law "Great and

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[29] Idaho Code § 42-202B(7).

[30] This provision is stated twice in the Act. Idaho Code §§ 42-219(1), 42-222(1).

Growing Cities Doctrine" contains little if any protection against municipal speculation. Consequently, in Colorado, stockpiling and trading of municipal water rights is common, and cities have invested heavily, both in water rights and in water right lawyers. The anti-speculation provisions in the Idaho statute were intentionally designed to destroy the incentives which have led to this phenomenon. So far, it seems to have worked.

One last aspect of the statute requires discussion. Under the 1996 Act, a license for a "future need" water right may be issued "for an amount up to the full capacity of the system constructed or used in accordance with the original permit . . . ."[31] In other words, at the time of license, the water right claimant actually must have constructed some "system" for diversion, storage and/or delivery of the water which is physically sized to meet the claimed future needs. Presumably a municipal provider need not have constructed the entire system. If that were required, then the Act's central objective of allowing a city to gradually, economically, and efficiently develop its system would be entirely defeated. However, the statute appears to require that there be some tangible evidence of the provider's commitment to meet the claimed future needs. The idea is that the willingness of the provider to invest today's capital in infrastructure to meet future needs is a further guard against the purely speculative acquisition of water rights. The IDWR is now in the process of issuing guidance which addresses this very point.

While the legislature laid out extensive procedures for the acquisition of "future need" water rights henceforth, it has not codified or altered the common law Growing Communities Doctrine with respect to pre-Act rights held by municipal providers. Instead, the legislature recognized the existence of the doctrine and provided "no change in the common law."[32] Presumably, then, such rights will continue to be governed by the general principles enunciated in *Beus v. City of Soda Springs*, *City of Pocatello v. Murray*, and *Village of Peck v. Denison*. One would expect, as well, that as the Growing Communities Doctrine continues to evolve in the context of pre-1996 municipal rights, Idaho courts may be influenced to some extent by what the

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[31] Idaho Code § 42-219(1).

[32] Whether the very enactment of the 1996 Act has had an effect on the common law is a fundamental question yet to be answered. One might argue that in adopting a codified municipal rights law for some water rights, the legislature intended to repeal common law protections for other municipal water rights. This does not appear to be the intent of the legislature, however. As noted on page 40, the Act's Statement of Purpose expressly disclaims any intent to change the common law. Moreover, the Act contains a savings clause, Idaho Code § 42-202(11), which purports to preserve the common law's protection for pre-1996 municipal rights. In the end, however, the common law is whatever the court says it is.

legislature has done for post-1996 rights.

It is unclear exactly how municipal providers holding water rights for quantities exceeding their current needs will respond to the new law. Some may let a sleeping dog lie and see how their rights fair under the common law when they come up for review under the SRBA or in other contexts. There is support for the proposition that these rights are immune from forfeiture, because of their special municipal status under the common law. Lynne Krogh-Hampe, *Injury and Enlargement in Idaho Water Right Transfers*, 27 Idaho L. Rev. 249, 294 (1990) ("Therefore, when a municipal corporation acquires a water right, the city generally will not lose the water right due to nonuse."). The IDWR has taken the position in recent guidance that forfeiture and abandonment apply to municipal rights, but only when the municipal supplier has no current for future need for them. That is certainly consistent and logical outgrowth of the case law in Idaho. On the other hand, no Idaho court has yet said it as clearly as the Department has.

Others may affirmatively seek to convert these rights to "future need" rights under the 1996 Act. The Act does not specifically address such transfers of "old" municipal rights to "new" municipal rights and no test case has yet occurred. However, there appears to be no reason why such a transfer would be prohibited, and the Department has begun to entertain applications for this purpose.

Such transfers of municipal rights also afford opportunities to achieve other goals, most notably, establishing a comprehensive system of alternative points of diversion, so that the city's physical system may be operated more flexibly and efficiently.[33] And, of course, if the municipal water rights portfolio survives the scrutiny entailed in the transfer process, it will be

---

[33] Adding alternative points of diversion to a municipal system (or to any water right) raises interesting injury questions. The Department's position on this is quite clear. Let's take a simplified example. Suppose a city owns two wells, one with a 1950 priority for 1 cfs and one with a 1980 priority for 2 cfs. Suppose further that the city transfers the rights to bring them under the 1996 Act and makes them alternative points of diversion for each other. Next, suppose that the 1980 well becomes involved in a well interference dispute with a nearby 1970 irrigation well. May the city defend the interference claim by asserting that it is pumping 1950 water out of the 1980 well? The answer is clearly no. Despite each well being an alternative point of diversion for each other, the Department will continue to administer the wells on the basis of the pre-transfer priorities for purposes of well interference. But suppose instead that due to declining aquifer conditions, an environmental calls (e.g., endangered species needs), or what have you, there were an aquifer-wide regulation of pre-1960 wells. This is not a well interference call, but an aquifer-wide regulation of wells. In this case, the city, if it chose, could continue to pump up to 1 cfs of "1950 water" out of the 1980 well. In sum, going through the process of assigning alternative points of diversion will make no difference at all with respect to local well disputes, but can make an enormous difference if there is ever regional regulation of underground supplies.

accorded the more express protections available under the Act (e.g., expanding service areas). On whole, such a portfolio stands a much better chance of surviving SRBA review intact.

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

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

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

RECEIVED
JUL 16 1999
Department of Water Resources
Southern Region

July 15, 1999

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

Dear Mr. Meyer:

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

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

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

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

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

I trust this letter clarifies the matters for you.

Sincerely,

L. Glen Saxton

L. GLEN SAXTON
Hearing Officer

c: Bill Chisholm
Lee Halper
Michael Ihler
Darcy Thornborrow
Allen Merritt

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

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

RECEIVED
JUL 16 1999
Department of Water Resources
Southern Region

BEFORE THE
IDAHO DEPARTMENT OF WATER RESOURCES

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

Jerome Cheese,
Applicant

William K. Chisholm,
Lee J. Halper,
Protestants

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

Jerome Cheese,
Applicant

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

APPLICANT'S REQUEST FOR CLARIFICATION REGARDING SCOPE OF HEARING

Dated this 14th day of July, 1999.

GIVENS PURSLEY LLP

By _____
Christopher H. Meyer

Attorneys for Applicant
Jerome Cheese

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

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

July 15, 1999

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

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

Dear Mr. Meyer:

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

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

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

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

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

I trust this letter clarifies the matters for you.

Sincerely,

L. Glen Saxton

L. GLEN SAXTON
Hearing Officer

c: Bill Chisholm
Lee Halper
Michael Ihler
Darcy Thornborrow
Allen Merritt

ORIGINAL

RECEIVED
JUL 14 1999
Department of Water Resources

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

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

BEFORE THE
IDAHO DEPARTMENT OF WATER RESOURCES

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

Jerome Cheese,
Applicant

William K. Chisholm,
Lee J. Halper,
Protestants

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

Jerome Cheese,
Applicant

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

APPLICANT'S REQUEST FOR CLARIFICATION REGARDING SCOPE OF HEARING

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

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

In reliance on this ruling, Applicant has prepared its evidence for the upcoming hearing to exclude matters beyond the scope as described above. For instance, Applicant has prepared no evidence regarding the environmental and related impacts of the dairy industry on the Magic Valley.

Applicant is confused, however, by the order of the Department of Water Resources dated July 1, 1999 which authorized issuance of a subpoena to Lewis Eilers, the head of the Idaho Dairy Association. It would appear that any testimony which could be offered by Mr. Eilers would fall outside the scope of issues allowed for the hearing.

Dated this 14th day of July, 1999.

GIVENS PURSLEY LLP

By _____
Christopher H. Meyer

Attorneys for Applicant
Jerome Cheese

CERTIFICATE OF SERVICE

I hereby certify that on July 14, 1999 I caused to be served a true and correct copy of the foregoing to each of the persons named below by the method indicated below each of their names.

Mr. William K. Chisholm
19073 E. Hwy. 30
Buhl, ID 83316
☑ U.S. Mail ☐ Fax ☐ Email ☐ Overnight

Original to
Mr. Karl J. Dreher
Director
Idaho Department of Water Resources
1301 N. Orchard St.
Statehouse Mail
Boise, ID 83720-9000
☑ U.S. Mail ☐ Fax ☑ By hand ☐ Overnight

Mr. Lee J. Halper
331 South 230 West
Jerome, ID 83338
☑ U.S. Mail ☐ Fax ☐ Email ☐ Overnight

Mr. Michael Ihler
2635-A East 3100 North
Twin Falls, ID 83301
☑ U.S. Mail ☐ Fax ☐ Email ☐ Overnight

Allen D. Merritt, P.E.
Southern Regional Manager
Idaho Department of Water Resources
1341 Fillmore St., Ste. 200
Twin Falls, ID 83301-3380
☑ U.S. Mail ☐ Fax ☐ Email ☐ Overnight

Mr. L. Glen Saxton
Idaho Department of Water Resources
1301 N. Orchard
Statehouse Mail
Boise, ID 83720-9000
☐ U.S. Mail ☐ Fax ☑ By hand ☐ Overnight

Ms. Darcy Thornborrow
1676 East 3800 North
Buhl, ID 83316
☑ U.S. Mail ☐ Fax ☐ Email ☐ Overnight

Christopher H. Meyer

State of Idano
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098
Phone: (208) 327-7900 FAX: (208) 327-7866

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

July 2, 1999

Lee Halper
331 S 230 W
Jerome ID 83338

RE: APPLICATION FOR TRANSFER NO. 5401 IN THE NAME OF JEROME CHEESE COMPANY

Dear Mr. Halper:

I have enclosed an Order dated July 1, 1999, eight (8) subpoenas and eight (8) blank Affidavits of Service, per your request, for use in connection with the above referenced matter. Please be advised that you are responsible for serving the subpoenas to the parties involved.

Sincerely,

Julie L. Yarbrough

JULIE L. YARBROUGH, Administrative Assistant
Water Allocation Bureau

Enclosures

c: Service List
Allen Merritt - IDWR Southern

COPY

BEFORE THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR TRANSFER NO. 5401 IN THE NAME OF JEROME CHEESE CO.	))))	**SUBPOENA**

THE STATE OF IDAHO TO: SCOTT BYBEE

YOU ARE HEREBY COMMANDED to appear before the Director of the Department of Water Resources at Obenchain Community Room, 264 Main Ave. South, Twin Falls, Idaho, on the 27th and 28th day of July, 1999, at 9:00 o'clock a.m. as a witness in the above entitled matter.

DATED this 1st day of July, 1999.

By order of the Director.

KARL J. DREHER, Director

COPY

BEFORE THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR TRANSFER NO. 5401 IN THE NAME OF JEROME CHEESE CO.	))))	**SUBPOENA**

THE STATE OF IDAHO TO: LEWIS EILERS

YOU ARE HEREBY COMMANDED to appear before the Director of the Department of Water Resources at Obenchain Community Room, 264 Main Ave. South, Twin Falls, Idaho, on the 27th and 28th day of July, 1999, at 9:00 o'clock a.m. as a witness in the above entitled matter.

DATED this 1st day of July, 1999.

By order of the Director.

KARL J. DREHER, Director

COPY

BEFORE THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR TRANSFER NO. 5401 IN THE NAME OF JEROME CHEESE CO.	))))	**SUBPOENA**

THE STATE OF IDAHO TO: BRAD GILMORE

YOU ARE HEREBY COMMANDED to appear before the Director of the Department of Water Resources at Obenchain Community Room, 264 Main Ave. South, Twin Falls, Idaho, on the 27th and 28th day of July, 1999, at 9:00 o'clock a.m. as a witness in the above entitled matter.

DATED this 1st day of July, 1999.

By order of the Director.

KARL J. DREHER, Director

COPY

BEFORE THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR TRANSFER NO. 5401 IN THE NAME OF JEROME CHEESE CO.	))))	**SUBPOENA**

THE STATE OF IDAHO TO: MIKE MCMASTERS

YOU ARE HEREBY COMMANDED to appear before the Director of the Department of Water Resources at Obenchain Community Room, 264 Main Ave. South, Twin Falls, Idaho, on the 27th and 28th day of July, 1999, at 9:00 o'clock a.m. as a witness in the above entitled matter.

DATED this 1st day of July, 1999.

By order of the Director.

KARL J. DREHER, Director

COPY

BEFORE THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR TRANSFER NO. 5401 IN THE NAME OF JEROME CHEESE CO.	))))	**SUBPOENA**

THE STATE OF IDAHO TO: KEN NEELY

YOU ARE HEREBY COMMANDED to appear before the Director of the Department of Water Resources at Obenchain Community Room, 264 Main Ave. South, Twin Falls, Idaho, on the 27th and 28th day of July, 1999, at 9:00 o'clock a.m. as a witness in the above entitled matter.

DATED this 1st day of July, 1999.

By order of the Director.

KARL J. DREHER, Director

COPY

BEFORE THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR TRANSFER NO. 5401 IN THE NAME OF JEROME CHEESE CO.	))))	**SUBPOENA**

THE STATE OF IDAHO TO: MARV PATTEN

YOU ARE HEREBY COMMANDED to appear before the Director of the Department of Water Resources at Obenchain Community Room, 264 Main Ave. South, Twin Falls, Idaho, on the 27th and 28th day of July, 1999, at 9:00 o'clock a.m. as a witness in the above entitled matter.

DATED this 1st day of July, 1999.

By order of the Director.

KARL J. DREHER, Director

COPY

BEFORE THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR TRANSFER NO. 5401 IN THE NAME OF JEROME CHEESE CO.	))))	**SUBPOENA**

THE STATE OF IDAHO TO: JOHN SANDY

YOU ARE HEREBY COMMANDED to appear before the Director of the Department of Water Resources at Obenchain Community Room, 264 Main Ave. South, Twin Falls, Idaho, on the 27th and 28th day of July, 1999, at 9:00 o'clock a.m. as a witness in the above entitled matter.

DATED this 1st day of July, 1999.

By order of the Director.

KARL J. DREHER, Director

COPY

BEFORE THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION)
FOR TRANSFER NO. 5401 IN THE) **SUBPOENA**
NAME OF JEROME CHEESE CO.)
_____)

THE STATE OF IDAHO TO: MARJ SCHMIDT

YOU ARE HEREBY COMMANDED to appear before the Director of the Department of Water Resources at Obenchain Community Room, 264 Main Ave. South, Twin Falls, Idaho, on the 27th and 28th day of July, 1999, at 9:00 o'clock a.m. as a witness in the above entitled matter.

DATED this 1st day of July, 1999.

By order of the Director.

KARL J. DREHER, Director

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098
Phone: (208) 327-7900 FAX: (208) 327-7866

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

July 2, 1999

RE: In the Matter of Petition to Intervene in Application for Transfer Nos. 5401 and 5436 in the name of Jerome Cheese Company

Dear Interested Party:

I have enclosed a copy of the Order Denying Petition to Intervene, issued in connection with above referenced transfer applications.

If you have any questions concerning the enclosed document, please contact me directly at (208)327-7953.

Sincerely,

Julie L. Yarbrough

JULIE L. YARBROUGH, Administrative Assistant
Water Allocation Bureau

Enclosure

c: IDWR - Southern

officially noticed @ hearing held on July 27 + 28, 1999

IDAPA 37
TITLE 03
Chapter 11

000. LEGAL AUTHORITY (Rule 0). These rules are promulgated pursuant to chapter 52, title 67, Idaho Code, the Idaho Administrative Procedure Act, and section 42-603, Idaho Code, which provides that the Director of the Department of Water Resources is authorized to adopt rules and regulations for the distribution of water from the streams, rivers, lakes, ground water and other natural water sources as shall be necessary to carry out the laws in accordance with the priorities of the rights of the users thereof. These rules are also issued pursuant to section 42-1805(8), Idaho Code, which provides the Director with authority to promulgate rules implementing or effectuating the powers and duties of the department. (10-07-94)

001. TITLE AND SCOPE (Rule 1). These rules may be cited as "Rules for Conjunctive Management of Surface and Ground Water Resources." The rules prescribe procedures for responding to a delivery call made by the holder of a senior-priority surface or ground water right against the holder of a junior-priority ground water right in an area having a common ground water supply. It is intended that these rules be incorporated into general rules governing water distribution in Idaho when such rules are adopted subsequently. (10-07-94)

002. WRITTEN INTERPRETATIONS (Rule 2). In accordance with section 67-5201(16)(b)(iv), Idaho Code, the Department of Water Resources does not have written statements that pertain to the interpretation of the rules of this chapter, or to the documentation of compliance with the rules of this chapter. (10-07-94)

003. ADMINISTRATIVE APPEALS (Rule 3). Appeals may be taken pursuant to section 42-1701A, Idaho Code, and the department's Rules of Procedure, IDAPA 37, Title 01, Chapter 01. (10-07-94)

004. SEVERABILITY (Rule 4). The rules governing this chapter are severable. If any rule, or part thereof, or the application of such rule to any person or circumstance is declared invalid, that invalidity does not affect the validity of any remaining portion of this chapter. (10-07-94)

005. OTHER AUTHORITIES REMAIN APPLICABLE (Rule 5). Nothing in these rules shall limit the Director's authority to take alternative or additional actions relating to the management of water resources as provided by Idaho law. (10-07-94)

006.---009. (RESERVED)

MICROFILMED

010. DEFINITIONS (Rule 10). For the purposes of these rules, the following terms will be used as defined below. (10-07-94)

01. Area Having a Common Ground Water Supply. A ground water source within which the diversion and use of ground water or changes in ground water recharge affect the flow of water in a surface water source or within which the diversion and use of water by a holder of a ground water right affects the ground water supply available to the holders of other ground water rights. (section 42-237a.g., Idaho Code) (10-07-94)

02. Artificial Ground Water Recharge. A deliberate and purposeful activity or project that is performed in accordance with section 42-234(2), Idaho Code, and that diverts, distributes, injects, stores or spreads water to areas from which such water will enter into and recharge a ground water source in an area having a common ground water supply. (10-07-94)

03. Conjunctive Management. Legal and hydrologic integration of administration of the diversion and use of water under water rights from surface and ground water sources, including areas having a common ground water supply. (10-07-94)

04. Delivery Call. A request from the holder of a water right for administration of water rights under the prior appropriation doctrine. (10-07-94)

05. Department. The Department of Water Resources created by section 42-1701, Idaho Code. (10-07-94)

06. Director. The Director of the Department of Water Resources appointed as provided by section 42-1801, Idaho Code, or an employee, hearing officer or other appointee of the Department who has been delegated to act for the Director as provided by section 42-1701, Idaho Code. (10-07-94)

07. Full Economic Development of Underground Water Resources. The diversion and use of water from a ground water source for beneficial uses in the public interest at a rate that does not exceed the reasonably anticipated average rate of future natural recharge, in a manner that does not result in material injury to senior-priority surface or ground water rights, and that furthers the principle of reasonable use of surface and ground water as set forth in Rule 42. (10-07-94)

08. Futile Call. A delivery call made by the holder of a senior-priority surface or ground water right that, for physical and hydrologic reasons, cannot be satisfied within a reasonable time of the call by immediately curtailing diversions under junior-priority ground water rights or that would result in waste of the water resource. (10-07-94)

09. Ground Water Management Area. Any ground water basin or designated part thereof as designated by the Director pursuant to section 42-233b, Idaho Code. (10-07-94)

10. Ground Water. Water under the surface of the ground whatever may be the geological structure in which it is standing or moving as provided in section 42-230(a), Idaho Code. (10-07-94)

11. Holder of a Water Right. The legal or beneficial owner or user pursuant to lease or contract of a right to divert or to protect in place surface or ground water of the state for a beneficial use or purpose. (10-07-94)

12. Idaho Law. The constitution, statutes, administrative rules and case law of Idaho. (10-07-94)

13. Junior-Priority. A water right priority date later in time than the priority date of other water rights being considered. (10-07-94)

14. Material Injury. Hindrance to or impact upon the exercise of a water right caused by the use of water by another person as determined in accordance with Idaho Law, as set forth in Rule 42. (10-07-94)

15. Mitigation Plan. A document submitted by the holder(s) of a junior-priority ground water right and approved by the Director as provided in Rule 43 that identifies actions and measures to prevent, or compensate holders of senior-priority water rights for, material injury caused by the diversion and use of water by the holders of junior-priority ground water rights within an area having a common ground water supply. (10-07-94)

16. Person. Any individual, partnership, corporation, association, governmental subdivision or agency, or public or private organization or entity of any character. (10-07-94)

17. Petitioner. Person who asks the Department to initiate a contested case or to otherwise take action that will result in the issuance of an order or rule. (10-07-94)

18. Reasonable Ground Water Pumping Level. A level established by the Director pursuant to sections 42-226, and 42-237a.g., Idaho Code, either generally for an area or aquifer or for individual water rights on a case-by-case basis, for the purpose of protecting the holders of senior-priority ground water rights against unreasonable lowering of ground water levels caused by diversion and use of surface or ground water by the holders of junior-priority surface or ground water rights under Idaho law. (10-07-94)

19. Reasonably Anticipated Average Rate of Future Natural Recharge. The estimated average annual volume of water recharged to an area having a common ground water supply from precipitation, underflow from tributary sources, and stream losses and also water incidentally recharged to an area having a common ground water supply as a result of the diversion and use of water for irrigation and other purposes. The estimate will be based on available data regarding conditions of diversion and use of water existing at the time the estimate is made and may vary as these conditions and available information change. (10-07-94)

20. Respondent. Persons against whom complaints or petitions are filed or about whom investigations are initiated. (10-07-94)

21. Senior-Priority. A water right priority date earlier in time than the priority dates of other water rights being considered. (10-07-94)

22. Surface Water. Rivers, streams, lakes and springs when flowing in their natural channels as provided in sections 42-101 and 42-103, Idaho Code. (10-07-94)

23. Water District. An instrumentality of the State of Idaho created by the Director as provided in section 42-604, Idaho Code, for the purpose of performing the essential governmental function of distribution of water among appropriators under Idaho law. (10-07-94)

24. Watermaster. A person elected and appointed as provided in section 42-605, and section 42-801, Idaho Code, to distribute water within a water district. (10-07-94)

25. Water Right. The legal right to divert and use or to protect in place the public waters of the State of Idaho where such right is evidenced by a decree, a permit or license issued by the Department, a beneficial or constitutional use right or a right based on federal law. (10-07-94)

011.---019. (RESERVED)

020. GENERAL STATEMENTS OF PURPOSE AND POLICIES FOR CONJUNCTIVE MANAGEMENT OF SURFACE AND GROUND WATER RESOURCES (Rule 20). (10-07-94)

01. Distribution of Water Among the Holders of Senior and Junior-Priority Rights. These rules apply to all situations in the state where the diversion and use of water under junior-priority ground water rights either individually or collectively causes material injury to uses of water under senior-priority water rights. The rules govern the

distribution of water from ground water sources and areas having a common ground water supply. (10-07-94)

02. Prior Appropriation Doctrine. These rules acknowledge all elements of the prior appropriation doctrine as established by Idaho law. (10-07-94)

03. Reasonable Use of Surface and Ground Water. These rules integrate the administration and use of surface and ground water in a manner consistent with the traditional policy of reasonable use of both surface and ground water. The policy of reasonable use includes the concepts of priority in time and superiority in right being subject to conditions of reasonable use as the legislature may by law prescribe as provided in Article XV, Section 5, Idaho Constitution, optimum development of water resources in the public interest prescribed in Article XV, Section 7, Idaho Constitution, and full economic development as defined by Idaho law. An appropriator is not entitled to command the entirety of large volumes of water in a surface or ground water source to support his appropriation contrary to the public policy of reasonable use of water as described in this rule. (10-07-94)

04. Delivery Calls. These rules provide the basis and procedure for responding to delivery calls made by the holder of a senior-priority surface or ground water right against the holder of a junior-priority ground water right. The principle of the futile call applies to the distribution of water under these rules. Although a call may be denied under the futile call doctrine, these rules may require mitigation or staged or phased curtailment of a junior-priority use if diversion and use of water by the holder of the junior-priority water right causes material injury, even though not immediately measurable, to the holder of a senior-priority surface or ground water right in instances where the hydrologic connection may be remote, the resource is large and no direct immediate relief would be achieved if the junior-priority water use was discontinued. (10-07-94)

05. Exercise of Water Rights. These rules provide the basis for determining the reasonableness of the diversion and use of water by both the holder of a senior-priority water right who requests priority delivery and the holder of a junior-priority water right against whom the call is made. (10-07-94)

06. Areas Having a Common Ground Water Supply. These rules provide the basis for the designation of areas of the state that have a common ground water supply and the procedures that will be followed in incorporating the water rights within such areas into existing water districts or creating new districts as provided in section 42-237a.g., and section 42-604, Idaho Code, or designating such areas as ground water management

areas as provided in section 42-233b, Idaho Code. (10-07-94)

07. Sequence of Actions for Responding to Delivery Calls. Rule 30 provides procedures for responding to delivery calls within areas having a common ground water supply that have not been incorporated into an existing or new water district or designated a ground water management area. Rule 40 provides procedures for responding to delivery calls within water districts where areas having a common ground water supply have been incorporated into the district or a new district has been created. Rule 41 provides procedures for responding to delivery calls within areas that have been designated as ground water management areas. Rule 50 designates specific known areas having a common ground water supply within the state. (10-07-94)

08. Reasonably Anticipated Average Rate of Future Natural Recharge. These rules provide for administration of the use of ground water resources to achieve the goal that withdrawals of ground water not exceed the reasonably anticipated average rate of future natural recharge. (Section 42-237a.g., Idaho Code) (10-07-94)

09. Saving of Defenses. Nothing in these rules shall affect or in any way limit any person's entitlement to assert any defense or claim based upon fact or law in any contested case or other proceeding. (10-07-94)

10. Wells as Alternate or Changed Points of Diversion for Water Rights from a Surface Water Source. Nothing in these rules shall prohibit any holder of a water right from a surface water source from seeking, pursuant to Idaho law, to change the point of diversion of the water to an inter-connected area having a common ground water supply. (10-07-94)

11. Domestic and Stock Watering Ground Water Rights Exempt. A delivery call shall not be effective against any ground water right used for domestic purposes regardless of priority date where such domestic use is within the limits of the definition set forth in section 42-111, Idaho Code, nor against any ground water right used for stock watering where such stock watering use is within the limits of the definition set forth in section 42-1401A(12), Idaho Code; provided, however, this exemption shall not prohibit the holder of a water right for domestic or stock watering uses from making a delivery call, including a delivery call against the holders of other domestic or stockwatering rights, where the holder of such right is suffering material injury. (10-07-94)

021---029 (RESERVED)

030. RESPONSES TO CALLS FOR WATER DELIVERY MADE BY THE HOLDERS OF SENIOR-PRIORITY SURFACE OR GROUND WATER RIGHTS AGAINST THE HOLDERS OF JUNIOR-PRIORITY GROUND WATER RIGHTS WITHIN AREAS OF THE STATE NOT IN ORGANIZED WATER DISTRICTS OR WITHIN WATER DISTRICTS WHERE GROUND WATER REGULATION HAS NOT BEEN INCLUDED IN THE FUNCTIONS OF SUCH DISTRICTS OR WITHIN AREAS THAT HAVE NOT BEEN DESIGNATED GROUND WATER MANAGEMENT AREAS (Rule 30). (10-07-94)

01. Delivery Call (petition). When a delivery call is made by the holder of a surface or ground water right (petitioner) alleging that by reason of diversion of water by the holders of one or more junior-priority ground water rights (respondents) the petitioner is suffering material injury, the petitioner shall file with the Director a petition in writing containing, at least, the following in addition to the information required by Department Rule of Procedure 230: (10-07-94)

a. A description of the water rights of the petitioner including a listing of the decree, license, permit, claim or other documentation of such right, the water diversion and delivery system being used by petitioner and the beneficial use being made of the water. (10-07-94)

b. The names, addresses and description of the water rights of the ground water users (respondents) who are alleged to be causing material injury to the rights of the petitioner in so far as such information is known by the petitioner or can be reasonably determined by a search of public records. (10-07-94)

c. All information, measurements, data or study results available to the petitioner to support the claim of material injury. (10-07-94)

d. A description of the area having a common ground water supply within which petitioner desires junior-priority ground water diversion and use to be regulated. (10-07-94)

02. Contested Case. The Department will consider the matter as a petition for contested case under the Department's Rules of Procedure, IDAPA 37.01.01. The petitioner shall serve the petition upon all known respondents as required by Rule of Procedure IDAPA 37.01.01203. In addition to such direct service by petitioner, the Department will give such general notice by publication or news release as will advise ground water users within the petitioned area of the matter. (10-07-94)

03. Informal Resolution. The Department may initially consider the contested case for informal resolution under the

provisions of section 67-5241, Idaho Code, if doing so will expedite the case without prejudicing the interests of any party. (10-07-94)

04. Petition for Modification of an Existing Water District. In the event the petition proposes regulation of ground water rights conjunctively with surface water rights in an organized water district, and the water rights have been adjudicated, the Department may consider such to be a petition for modification of the organized water district and notice of proposed modification of the water district shall be provided by the Director pursuant to section 42-604, Idaho Code. The Department will proceed to consider the matter addressed by the petition under the Department's Rules of Procedure. (10-07-94)

05. Petition for Creation of a New Water District. In the event the petition proposes regulation of ground water rights from a ground water source or conjunctively with surface water rights within an area having a common ground water supply which is not in an existing water district, and the water rights have been adjudicated, the Department may consider such to be a petition for creation of a new water district and notice of proposed creation of a water district shall be provided by the Director pursuant to section 42-604, Idaho Code. The Department will proceed to consider the matter under the Department's Rules of Procedure. (10-07-94)

06. Petition for Designation of a Ground Water Management Area. In the event the petition proposes regulation of ground water rights from an area having a common ground water supply within which the water rights have not been adjudicated, the Department may consider such to be a petition for designation of a ground water management area pursuant to section 42-233b, Idaho Code. The Department will proceed to consider the matter under the Department's Rules of Procedure. (10-07-94)

07. Order. Following consideration of the contested case under the Department's Rules of Procedure, the Director may, by order, take any or all of the following actions: (10-07-94)

a. Deny the petition in whole or in part; (10-07-94)

b. Grant the petition in whole or in part or upon conditions; (10-07-94)

c. Determine an area having a common ground water supply which affects the flow of water in a surface water source in an organized water district; (10-07-94)

d. Incorporate an area having a common ground water

supply into an organized water district following the procedures of section 42-604, Idaho Code, provided that the ground water rights that would be incorporated into the water district have been adjudicated relative to the rights already encompassed within the district; (10-07-94)

e. Create a new water district following the procedures of section 42-604, Idaho Code, provided that the water rights to be included in the new water district have been adjudicated; (10-07-94)

f. Determine the need for an adjudication of the priorities and permissible rates and volumes of diversion and consumptive use under the surface and ground water rights of the petitioner and respondents and initiate such adjudication pursuant to section 42-1406, Idaho Code; (10-07-94)

g. By summary order as provided in section 42-237 a.g., Idaho Code, prohibit or limit the withdrawal of water from any well during any period it is determined that water to fill any water right is not there available without causing ground water levels to be drawn below the reasonable ground water pumping level, or would affect the present or future use of any prior surface or ground water right or result in the withdrawing of the ground water supply at a rate beyond the reasonably anticipated average rate of future natural recharge. The Director will take into consideration the existence of any approved mitigation plan before issuing any order prohibiting or limiting withdrawal of water from any well; or (10-07-94)

h. Designate a ground water management area under the provisions of section 42-233b, Idaho Code, if it appears that administration of the diversion and use of water from an area having a common ground water supply is required because the ground water supply is insufficient to meet the demands of water rights or the diversion and use of water is at a rate beyond the reasonably anticipated average rate of future natural recharge and modification of an existing water district or creation of a new water district cannot be readily accomplished due to the need to first obtain an adjudication of the water rights. (10-07-94)

08. Orders for Interim Administration. For the purposes of Rules 30.07.d. and 30.07.e., an outstanding order for interim administration of water rights issued by the court pursuant to section 42-1417, Idaho Code, in a general adjudication proceeding shall be considered as an adjudication of the water

rights involved. (10-07-94)

09. Administration Pursuant to Rule 40. Upon a finding of an area of common ground water supply and upon the incorporation of such area into an organized water district, or the creation of a new water district, the use of water shall be administered in accordance with the priorities of the various water rights as provided in Rule 40. (10-07-94)

10. Administration Pursuant to Rule 41. Upon the designation of a ground water management area, the diversion and use of water within such area shall be administered in accordance with the priorities of the various water rights as provided in Rule 41. (10-07-94)

031. DETERMINING AREAS HAVING A COMMON GROUND WATER SUPPLY (Rule 31). (10-07-94)

01. Director to Consider Information. The Director will consider all available data and information that describes the relationship between ground water and surface water in making a finding of an area of common ground water supply. (10-07-94)

02. Kinds of Information. The information considered may include, but is not limited to, any or all of the following: (10-07-94)

a. Water level measurements, studies, reports, computer simulations, pumping tests, hydrographs of stream flow and ground water levels and other such data; and (10-07-94)

b. The testimony and opinion of expert witnesses at a hearing on a petition for expansion of a water district or organization of a new water district or designation of a ground water management area. (10-07-94)

03. Criteria for Findings. A ground water source will be determined to be an area having a common ground water supply if: (10-07-94)

a. The ground water source supplies water to or receives water from a surface water source; or (10-07-94)

b. Diversion and use of water from the ground water source will cause water to move from the surface water source to the ground water source. (10-07-94)

c. Diversion and use of water from the ground water source has an impact upon the ground water supply

available to other persons who divert and use water from the same ground water source. (10-07-94)

04. Reasonably Anticipated Average Rate of Future Natural Recharge. The Director will estimate the reasonably anticipated average rate of future natural recharge for an area having a common ground water supply. Such estimates will be made and updated periodically as new data and information are available and conditions of diversion and use change. (10-07-94)

05. Findings. The findings of the Director shall be included in the Order issued pursuant to Rule 30.07. (10-07-94)

032---039 (RESERVED)

040. RESPONSES TO CALLS FOR WATER DELIVERY MADE BY THE HOLDERS OF SENIOR-PRIORITY SURFACE OR GROUND WATER RIGHTS AGAINST THE HOLDERS OF JUNIOR-PRIORITY GROUND WATER RIGHTS FROM AREAS HAVING A COMMON GROUND WATER SUPPLY IN AN ORGANIZED WATER DISTRICT (Rule 40). (10-07-94)

01. Responding to a Delivery Call. When a delivery call is made by the holder of a senior-priority water right (petitioner) alleging that by reason of diversion of water by the holders of one or more junior-priority ground water rights (respondents) from an area having a common ground water supply in an organized water district the petitioner is suffering material injury, and upon a finding by the Director as provided in Rule 42. that material injury is occurring, the Director, through the watermaster, shall: (10-07-94)

a. Regulate the diversion and use of water in accordance with the priorities of rights of the various surface or ground water users whose rights are included within the district, provided, that regulation of junior-priority ground water diversion and use where the material injury is delayed or long range may, by order of the Director, be phased-in over not more than a five-year period to lessen the economic impact of immediate and complete curtailment; or (10-07-94)

b. Allow out-of-priority diversion of water by junior-priority ground water users pursuant to a mitigation plan that has been approved by the Director. (10-07-94)

02. Regulation of Uses of Water by Watermaster. The Director, through the watermaster, shall regulate use of water within the water district pursuant to Idaho law and the priorities of water rights as provided in section 42-604, Idaho Code, and under the following procedures: (10-07-94)

a. The watermaster shall determine the quantity of surface water of any stream included within the water district which is available for diversion and shall shut the headgates of the holders of junior-priority surface water rights as necessary to assure that water is being diverted and used in accordance with the priorities of the respective water rights from the surface water source. (10-07-94)

b. The watermaster shall regulate the diversion and use of ground water in accordance with the rights thereto, approved mitigation plans and orders issued by the Director. (10-07-94)

c. Where a call is made by the holder of a senior-priority water right against the holder of a junior-priority ground water right in the water district the watermaster shall first determine whether a mitigation plan has been approved by the Director whereby diversion of ground water may be allowed to continue out of priority order. If the holder of a junior-priority ground water right is a participant in such approved mitigation plan, and is operating in conformance therewith, the watermaster shall allow the ground water use to continue out of priority. (10-07-94)

d. The watermaster shall maintain records of the diversions of water by surface and ground water users within the water district and records of water provided and other compensation supplied under the approved mitigation plan which shall be compiled into the annual report which is required by section 42-606, Idaho Code. (10-07-94)

e. Under the direction of the Department, watermasters of separate water districts shall cooperate and reciprocate in assisting each other in assuring that diversion and use of water under water rights is administered in a manner to assure protection of senior-priority water rights provided the relative priorities of the water rights within the separate water districts have been adjudicated. (10-07-94)

03. Reasonable Exercise of Rights. In determining whether diversion and use of water under rights will be regulated under Rules 40.01.a., or 40.01.b., the Director shall consider whether the petitioner making the delivery call is suffering material injury to a senior-priority water right and is diverting and using water efficiently and without waste, and in a manner consistent with the goal of reasonable use of surface and ground waters as described in Rule 42. The Director will also consider whether the respondent junior-

priority water right holder is using water efficiently and without waste. (10-07-94)

04. Actions of the Watermaster under a Mitigation Plan. Where a mitigation plan has been approved as provided in Rule 42, the watermaster may permit the diversion and use of ground water to continue out of priority order within the water district provided the holder of the junior-priority ground water right operates in accordance with such approved mitigation plan. (10-07-94)

05. Curtailment of Use Where Diversions Not in Accord with Mitigation Plan or Mitigation Plan is Not Effective. Where a mitigation plan has been approved and the junior-priority ground water user fails to operate in accordance with such approved plan or the plan fails to mitigate the material injury resulting from diversion and use of water by holders of junior-priority water rights, the watermaster will notify the Director who will immediately issue cease and desist orders and direct the watermaster to terminate the out-of-priority use of ground water rights otherwise benefitting from such plan or take such other actions as provided in the mitigation plan to ensure protection of senior-priority water rights. (10-07-94)

06. Collection of Assessments Within Water District. Where a mitigation plan has been approved, the watermaster of the water district shall include the costs of administration of the plan within the proposed annual operation budget of the district; and, upon approval by the water users at the annual water district meeting, the water district shall provide for the collection of assessment of ground water users as provided by the plan, collect the assessments and expend funds for the operation of the plan; and the watermaster shall maintain records of the volumes of water or other compensation made available by the plan and the disposition of such water or other compensation. (10-07-94)

041. ADMINISTRATION OF DIVERSION AND USE OF WATER WITHIN A GROUND WATER MANAGEMENT AREA (Rule 41). (10-07-94)

01. Responding to a Delivery Call. When a delivery call is made by the holder of a senior-priority ground water right against holders of junior-priority ground water rights in a designated ground water management area alleging that the ground water supply is insufficient to meet the demands of water rights within all or portions of the ground water management area and requesting the Director to order water right holders, on a time priority basis, to cease or reduce withdrawal of water, the Director shall proceed as follows: (10-07-94)

a. The petitioner shall be required to submit all information available to petitioner on which the claim is based that the water supply is insufficient. (10-07-94)

b. The Director shall conduct a fact-finding hearing on the petition at which the petitioner and respondents may present evidence on the water supply, and the diversion and use of water from the ground water management area. (10-07-94)

02. Order. Following the hearing, the Director may take any or all of the following actions: (10-07-94)

a. Deny the petition in whole or in part; (10-07-94)

b. Grant the petition in whole or in part or upon conditions; (10-07-94)

c. Find that the water supply of the ground water management area is insufficient to meet the demands of water rights within all or portions of the ground water management area and order water right holders on a time priority basis to cease or reduce withdrawal of water, provided that the Director shall consider the expected benefits of an approved mitigation plan in making such finding. (10-07-94)

d. Require the installation of measuring devices and the reporting of water diversions pursuant to section 42-701, Idaho Code. (10-07-94)

03. Date and Effect of Order. Any order to cease or reduce withdrawal of water will be issued prior to September 1 and shall be effective for the growing season during the year following the date the order is given and until such order is revoked or modified by further order of the Director. (10-07-94)

04. For the purposes of the Order provided in Rules 41.02 and 41.03, the Director will utilize all available water right records, claims, permits, licenses and decrees to prepare a water right priority schedule. (10-07-94)

042. DETERMINING MATERIAL INJURY AND REASONABLENESS OF WATER DIVERSIONS (Rule 42). (10-07-94)

01. Factors the Director may consider in determining whether the holders of water rights are suffering material injury and using water efficiently and without waste include, but are not limited to, the following: (10-07-94)

a. The amount of water available in the source from

which the water right is diverted. (10-07-94)

b. The effort or expense of the holder of the water right to divert water from the source. (10-07-94)

c. Whether the exercise of junior-priority ground water rights individually or collectively affects the quantity and timing of when water is available to, and the cost of exercising, a senior-priority surface or ground water right. This may include the seasonal as well as the multi-year and cumulative impacts of all ground water withdrawals from the area having a common ground water supply. (10-07-94)

d. If for irrigation, the rate of diversion compared to the acreage of land served, the annual volume of water diverted, the system diversion and conveyance efficiency, and the method of irrigation water application. (10-07-94)

e. The amount of water being diverted and used compared to the water rights. (10-07-94)

f. The existence of water measuring and recording devices. (10-07-94)

g. The extent to which the requirements of the holder of a senior-priority water right could be met with the user's existing facilities and water supplies by employing reasonable diversion and conveyance efficiency and conservation practices; provided, however, the holder of a surface water storage right shall be entitled to maintain a reasonable amount of carry-over storage to assure water supplies for future dry years. In determining a reasonable amount of carry-over storage water, the Director shall consider the average annual rate of fill of storage reservoirs and the average annual carry-over for prior comparable water conditions and the projected water supply for the system. (10-07-94)

h. The extent to which the requirements of the senior-priority surface water right could be met using alternate reasonable means of diversion or alternate points of diversion, including the construction of wells or the use of existing wells to divert and use water from the area having a common ground water supply under the petitioner's surface water right priority. (10-07-94)

02. The holder of a senior-priority surface or ground water right will be prevented from making a delivery call for curtailment of pumping of any well used by the holder of a junior-priority ground water right where use of water under

the junior-priority right is covered by an approved and effectively operating mitigation plan. (10-07-94)

043. MITIGATION PLANS (Rule 43) (10-07-94)

01. Submission of Mitigation Plans. A proposed mitigation plan shall be submitted to the Director in writing and shall contain the following information: (10-07-94)

a. The name and mailing address of the person or persons submitting the plan. (10-07-94)

b. Identification of the water rights for which benefit the mitigation plan is proposed. (10-07-94)

c. A description of the plan setting forth the water supplies proposed to be used for mitigation and any circumstances or limitations on the availability of such supplies. (10-07-94)

d. Such information as shall allow the Director to evaluate the factors set forth in Rule 43.03. (10-07-94)

02. Notice and Hearing. Upon receipt of a proposed mitigation plan the Director will provide notice, hold a hearing as determined necessary, and consider the plan under the procedural provisions of section 42-222, Idaho Code, in the same manner as applications to transfer water rights. (10-07-94)

03. Factors to be Considered. Factors that may be considered by the Director in determining whether a proposed mitigation plan will prevent injury to senior rights include, but are not limited to, the following: (10-07-94)

a. Whether delivery, storage and use of water pursuant to the mitigation plan is in compliance with Idaho law. (10-07-94)

b. Whether the mitigation plan will provide replacement water, at the time and place required by the senior-priority water right, sufficient to offset the depletive effect of ground water withdrawal on the water available in the surface or ground water source at such time and place as necessary to satisfy the rights of diversion from the surface or ground water source. Consideration will be given to the history and seasonal availability of water for diversion so as not to require replacement water at times when the surface right historically has not received a full supply, such as during annual low-flow periods and extended drought periods. (10-07-94)

c. Whether the mitigation plan provides replacement water supplies or other appropriate compensation to the senior-priority water right when needed during a time of shortage even if the effect of pumping is spread over many years and will continue for years after pumping is curtailed. A mitigation plan may allow for multi-season accounting of ground water withdrawals and provide for replacement water to take advantage of variability in seasonal water supply. The mitigation plan must include contingency provisions to assure protection of the senior-priority right in the event the mitigation water source becomes unavailable. (10-07-94)

d. Whether the mitigation plan proposes artificial recharge of an area of common ground water supply as a means of protecting ground water pumping levels, compensating senior-priority water rights, or providing aquifer storage for exchange or other purposes related to the mitigation plan. (10-07-94)

e. Where a mitigation plan is based upon computer simulations and calculations, whether such plan uses generally accepted and appropriate engineering and hydrogeologic formulae for calculating the depletive effect of the ground water withdrawal. (10-07-94)

f. Whether the mitigation plan uses generally accepted and appropriate values for aquifer characteristics such as transmissivity, specific yield, and other relevant factors. (10-07-94)

g. Whether the mitigation plan reasonably calculates the consumptive use component of ground water diversion and use. (10-07-94)

h. The reliability of the source of replacement water over the term in which it is proposed to be used under the mitigation plan. (10-07-94)

i. Whether the mitigation plan proposes enlargement of the rate of diversion, seasonal quantity or time of diversion under any water right being proposed for use in the mitigation plan. (10-07-94)

j. Whether the mitigation plan is consistent with the conservation of water resources, the public interest or injures other water rights, or would result in the diversion and use of ground water at a rate beyond the reasonably anticipated average rate of future natural recharge. (10-07-94)

k. Whether the mitigation plan provides for monitoring

and adjustment as necessary to protect senior-priority water rights from material injury. (10-07-94)

l. Whether the plan provides for mitigation of the effects of pumping of existing wells and the effects of pumping of any new wells which may be proposed to take water from the areas of common ground water supply. (10-07-94)

m. Whether the mitigation plan provides for future participation on an equitable basis by ground water pumpers who divert water under junior-priority rights but who do not initially participate in such mitigation plan. (10-07-94)

n. A mitigation plan may propose division of the area of common ground water supply into zones or segments for the purpose of consideration of local impacts, timing of depletions, and replacement supplies. (10-07-94)

o. Whether the petitioners and respondents have entered into an agreement on an acceptable mitigation plan even though such plan may not otherwise be fully in compliance with these provisions. (10-07-94)

044---049 (RESERVED)

050. AREAS DETERMINED TO HAVE A COMMON GROUND WATER SUPPLY (Rule 50).

01. Eastern Snake Plain Aquifer. The area of coverage of this rule is the aquifer underlying the Eastern Snake River Plain as the aquifer is defined in the report, Hydrology and Digital Simulation of the Regional Aquifer System, Eastern Snake River Plain, Idaho, USGS Professional Paper 1408-F, 1992 excluding areas south of the Snake River and west of the line separating Sections 34 and 35, Township 10 South, Range 20 East, Boise Meridian. (10-07-94)

a. The Eastern Snake Plain Aquifer supplies water to and receives water from the Snake River. (10-07-94)

b. The Eastern Snake Plain Aquifer is found to be an area having a common ground water supply. (10-07-94)

c. The reasonably anticipated average rate of future natural recharge of the Eastern Snake Plain Aquifer will be estimated in any order issued pursuant to Rule 30. (10-07-94)

d. The Eastern Snake Plain Aquifer area of common ground water supply will be created as a new water district or

incorporated into an existing or expanded water district as provided in section 42-604, Idaho Code, when the rights to the diversion and use of water from the aquifer have been adjudicated, or will be designated a ground water management area. (10-07-94)

051.---099. (RESERVED)

State of Idaho
Department of Water Resources



ROSTER OF ATTENDANCE

IN THE MATTER OF APPLICATION FOR TRANSFER NO. 5401 AND 5436 IN THE NAME OF JEROME CHEESE COMPANY

Date: July 27 and 28, 1999

Time: 9:00 a.m.

Location: Obenchain Community Room
264 Main Ave. South
Twin Falls, ID

Hearing Officer: L. Glen Saxton

* * *Please Print* * *

NAME	ADDRESS	REPRESENTING (Applicant, Protestant or Intervenor)
July 27, 1999		
Michael C. Creamer	P.O. Box 2720, Boise 83701	Applicant
Christopher H. Meyer	"	"
Paul Hunter	1605 N. 13th Boise 83702	Applicant
[illegible]	331 S 230 W JEROME 83338	PROTESTANT
Bradley J. Glenn	3285 E 3210 N. TWIN FALLS SUB.	
Mike McMasters	601 Rhoner Rd Twin Falls	
Ken Neely	1301 N. Orchard Boise ID	
Patrick Brown	812 Shoshone ST E TF	Dairy Farmers
Bill Chisholm	19073 E Hwy 30 Buhl	Protestant

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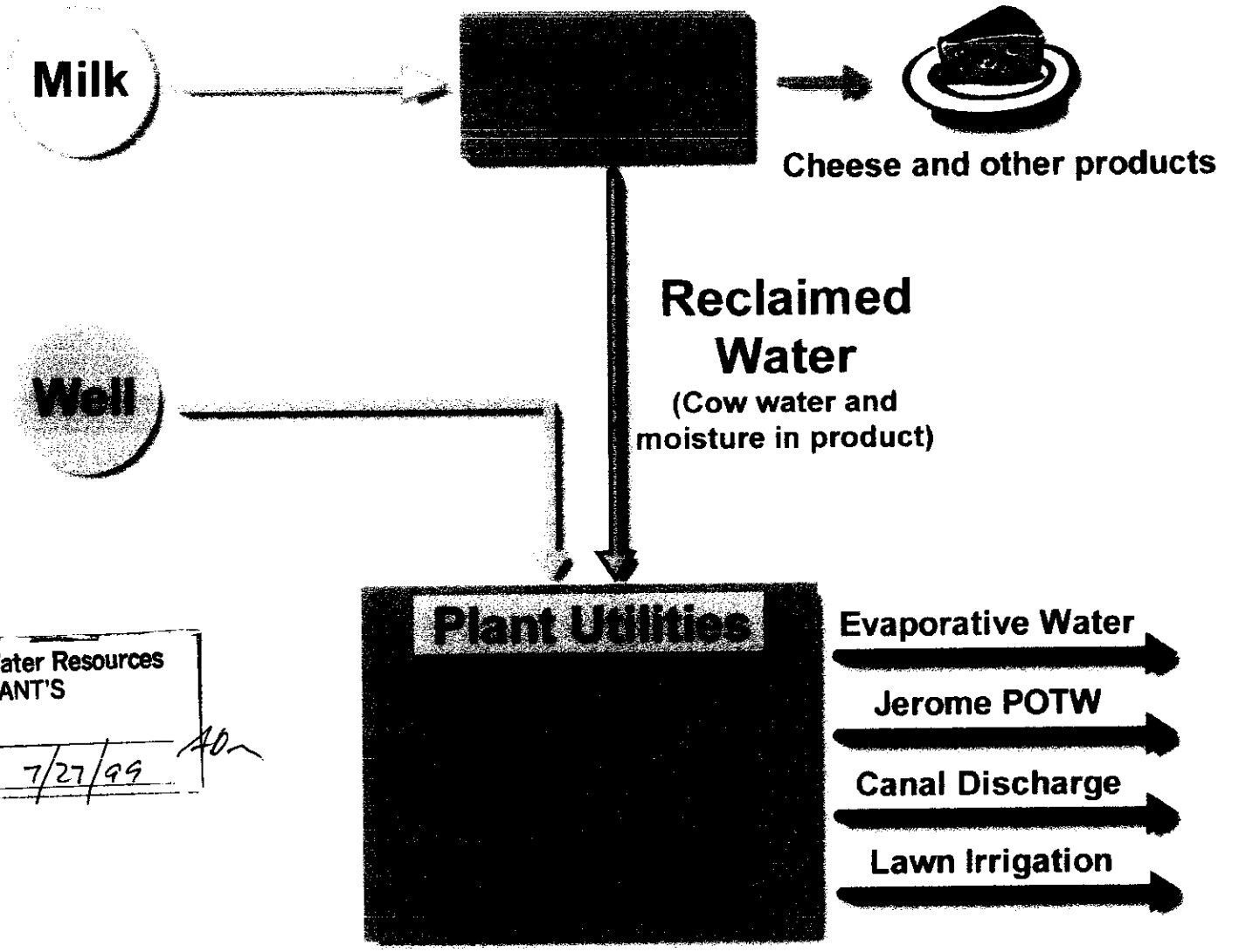
ROSTER OF ATTENDANCE - PAGE 2

** Please Print **

NAME	ADDRESS	REPRESENTING
J Rex Minchey	Box 485 Jerome Id	Jerome Cheese
Scott McClure	502 W Main, T.F.	Jerome Cheese
Mike Felton	POB 589 B-H	Box Canyon
Scott Hardy	3520 A S 16 E	Box Canyon
N.S. Nokkentved	Box 548 TF	Times News
Marjorie Schmidt	603 E. 16th Jerome	City of Jerome
Jon Doan	122 C.C. Road	Jerome Cheese
Christopher H. Meyer	277 N. 6th St Boise	Jerome Cheese
Charles E. Brockway	2016 N. Washington TF	Jerome Cheese
Michael W Dalton	2635 AE - 300 N TF	Self

July 28, 1999

MICRO

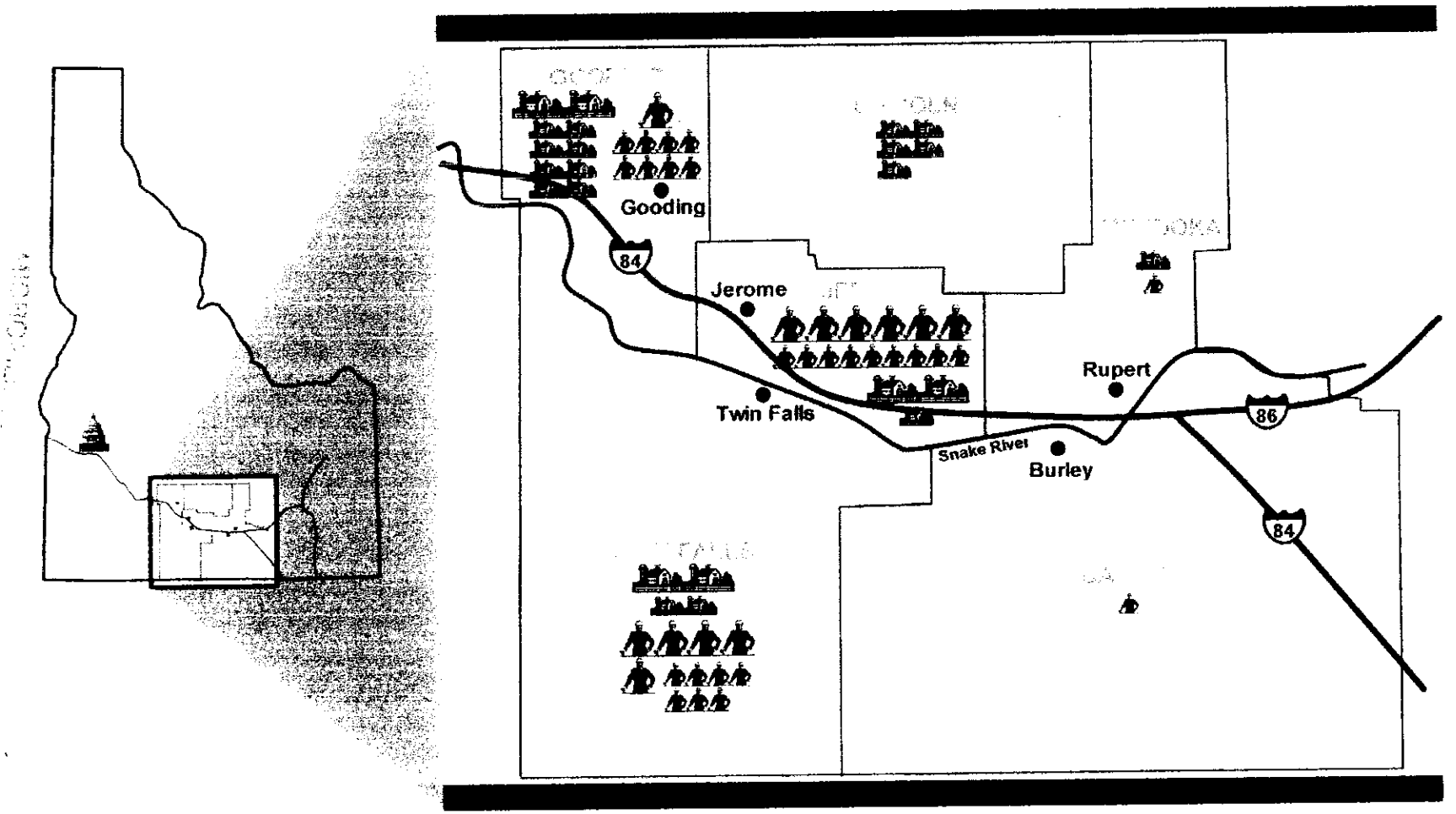


Department of Water Resources
APPLICANT'S
Exhibit 1
Date Admitted 7/27/99

Dairy = $300 Million

150 Empl.
$ 4 Million

Jerome Cheese Economic Factors in Magic Valley



Department of Water Resources
APPLICANT'S
Exhibit 2
Date Admitted 7/27/99

JEROME CHEESE COMPANY
WATER CONSERVATION MEASURES



Department of Water Resources
APPLICANT'S
Exhibit 3
Date Admitted 7/27/99

Snake Plain Aquifer

Snake River

Hagerman

3100
3200
3250
3300
3500
3800
3900
4000
4100
4200
4400

SANDY

Wendell

JEROME CHEESE

Twin Falls

Kimberly

Milner

Burley

Minidoka

Nr Blackfoot

HINCKS

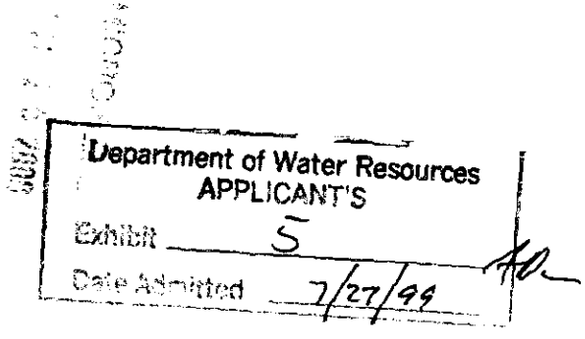
American Falls

Neeley

Department of Water Resources
ARCHIVES
Exhibit 4
Date Submitted 7/27/95

Jerome Cheese Water Right Transfers
Annual Water Budget Comparisons

	Transfer	Transfer	Total
Transfer #	5401	5436	
Water Right	36-07337E	35-08606	
Owner	Sandy	Hincks	
Acreage Transferred ac	33	160	193
Discharge Transferred cfs	0.66	3.2	3.86
Annual Diversion Allowed for Irrigation af	132	640	772
Consumptive use, (Allen & Brockway '83)	3.29	3.18	
Consumptive use, af/a (IDWR allowed)	3	3	
Consumptive use (actual)	108.5	508.7	617.1
Consumptive use, transferred af	99	480	579



Summary for Both Proposed Transfers

Total Maximum Diversion Allowed=	3.86 cfs
Est. Average Summer Daily Use=	1.26 cfs
Allowed Annual Diversion for Irrigation=	772.0 af/year
Est. Annual Well Water Diversion-Jerome Cheese	391.4 af/year
Total Maximum Annual Volume Allowed=	579.0 af/year
Est. Annual Volume Consumptively Used=	123.6 af/year

Brockway Engineering P.L.L.C. 7/26/99

Plant Water Use

	Normal summer gallons per day	Average acre feet/yr
Input		
City of Jerome	350000	391.4
Cow Water	365000	408.2
Moisture in product	100000	111.8
Total	815000	~~799.6~~ 911.4
Outflow		
Jerome POTW	425000	475.3
NSCC Canal	250000	279.6
Steam*	5000	5.6
Evaporators*	80000	89.5
Scrubbers and other	5000	5.6
Irrigation(lawn)**	50000	30.6
Total	815000	886.1
Total cfs	1.26	

Evaporative losses	
Steam*	5.6
Evaporators*	89.5
Scrubbers and other*	5.6
Irrigation(lawn)*	23.0
Total af/y	123.6

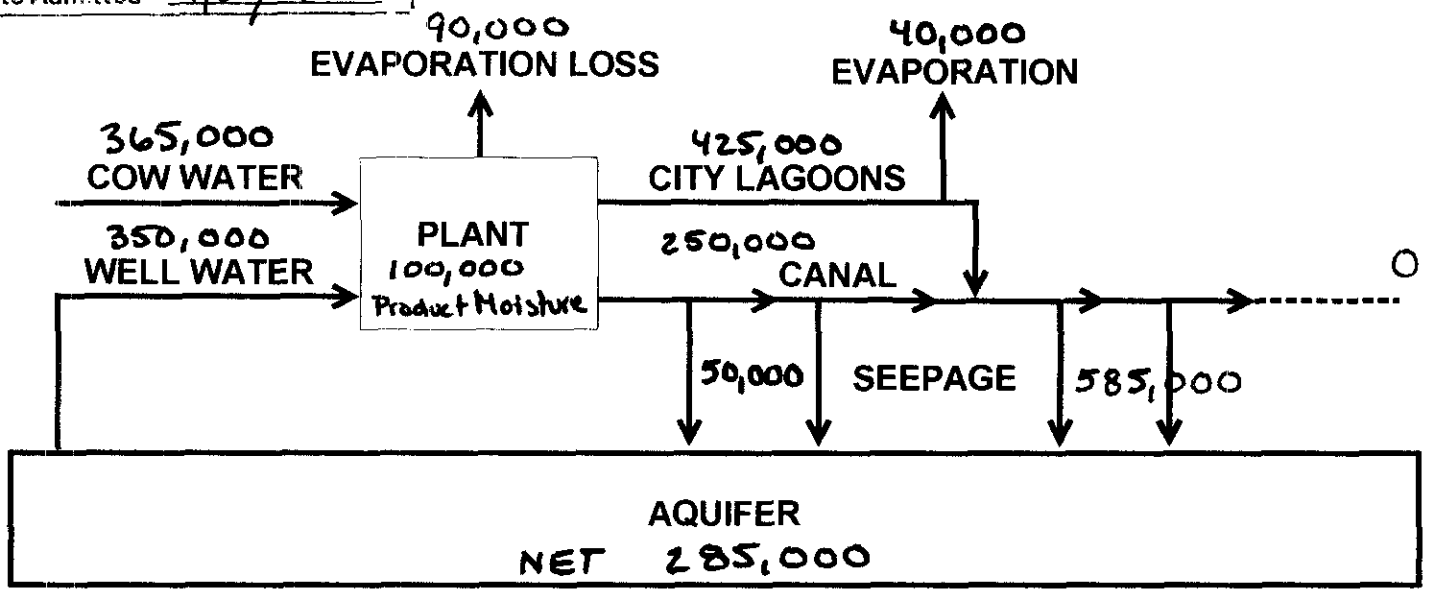
*= evaporative loss from cow water

Brockway Engineering P.L.L.C. 7/22/1999
Jerome Cheese Water Right Transfers-Water Budget

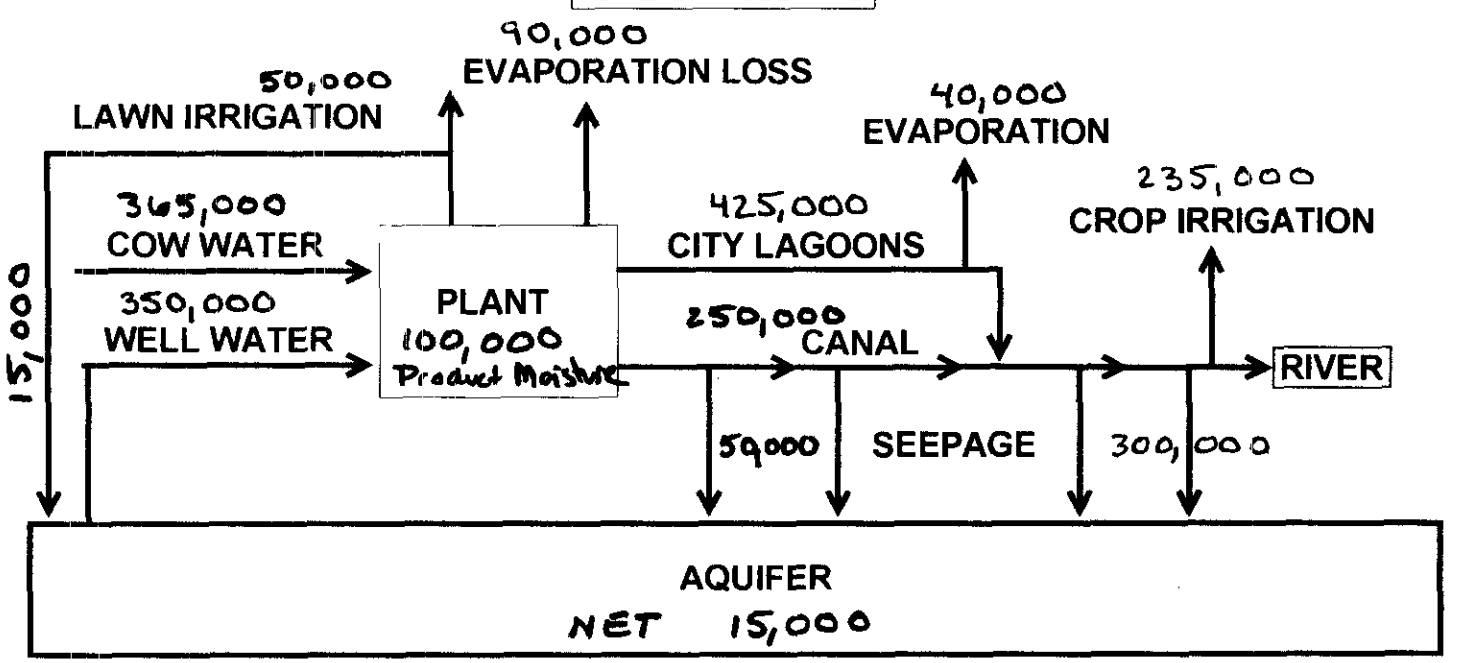
JEROME CHEESE CO.
WATER USE SCHEMATIC

Department of Water Resources
APPLICANT'S
Exhibit 6
Date Admitted 7/27/95

WINTER



SUMMER



MICRO

2 8 2005

EXHIBIT LOG

RE: Jerome Cheese Transfers
PLACE: Twin Falls, ID
DATE: 9:00 am , Tuesday, July 27, 1999
HEARING OFFICER: Glen Saxton
ASSISTED BY: Allen Merritt

APPLICANT			PROTESTANT		
EXHIBIT ID	DESCRIPTION	ENTERED?	EXHIBIT ID	DESCRIPTION	ENTERED?
1	Plant Schematic	Yes	A	Letter	Yes
2	Econ Factors	Yes	B	Nitrate Report	Not offered
3	Cons. Meas.	Yes	C	Transmissivity	Not Offered
4	ESPA Map	Yes	D	Hydrographs	Not offered
5	Water Budget	Yes	E	ESPA changemap	Not Offered
6	Water Use Schematic	Yes	F		
7	Location - Diagram	Not offered	G		
8	Location Quad	Not offered	H		
9	Well interf. analysis - Sandy	Yes	I		
10	Well interf. anal - Hincks	Yes	J		
11	Well inter - combined	Yes	K		
12	McClure Resume	Not offered	L		
13	WR. Summary	Yes	M		
14	Site Plan	Yes	N		
15	Well house Plan	Yes	O		
16	Sandy Contract	Yes	P		
17	Hincks Contract	Yes	Q		
18	GIS Before	Yes	R		
19	GIS After	Yes	S		
20			T		
21			U		
22			V		
23			W		
24			X		
25			Y		
26			Z		

To be returned * Confirmed 7/28/99

Kept by Helper

MICRO

Well Interference Analysis Proposed Jerome Cheese Well(s) Q=0.66 cfs

Estimated Well Drawdown

C.E. BROCKWAY July 15, 1999 Brockway Engineering P.L.L.C. THEISwellintceb

AQUIFER PROPERTIES BASED ON USBR GROUNDWATER MANUAL-FRACTURED IGNEOUS ROCK

EST. HOLE DIA. 12 INCHES

USING THEIS FORMULA S=114.6*Q/T*W(U)
S= DRAWDOWN IN FT
Q= PUMPING RATE GPM
T= COEFFICIENT OF TRANSMISSIBILITY GPD/FT
W(U)= WELL FUNCTION OF 'U'

W(U)=-.5772-LOGeU +U-U^2/(2*2!)+U^3/(3*3!)-U^4/(4*4!) .....
U=1.87*r^2*S/(T*t)
r=DISTANCE IN FT. FROM CENTER OF PUMPED WELL TO DRAWDOWN POINT
S=COEFFICIENT OF STORAGE
T=COEFFICIENT OF TRANSMISSIBILITY, GPD/FT
t= TIME SINCE PUMPING STARTED, DAYS

Department of Water Resources
APPLICANT'S
Exhibit 9
Date Admitted 7/27/99

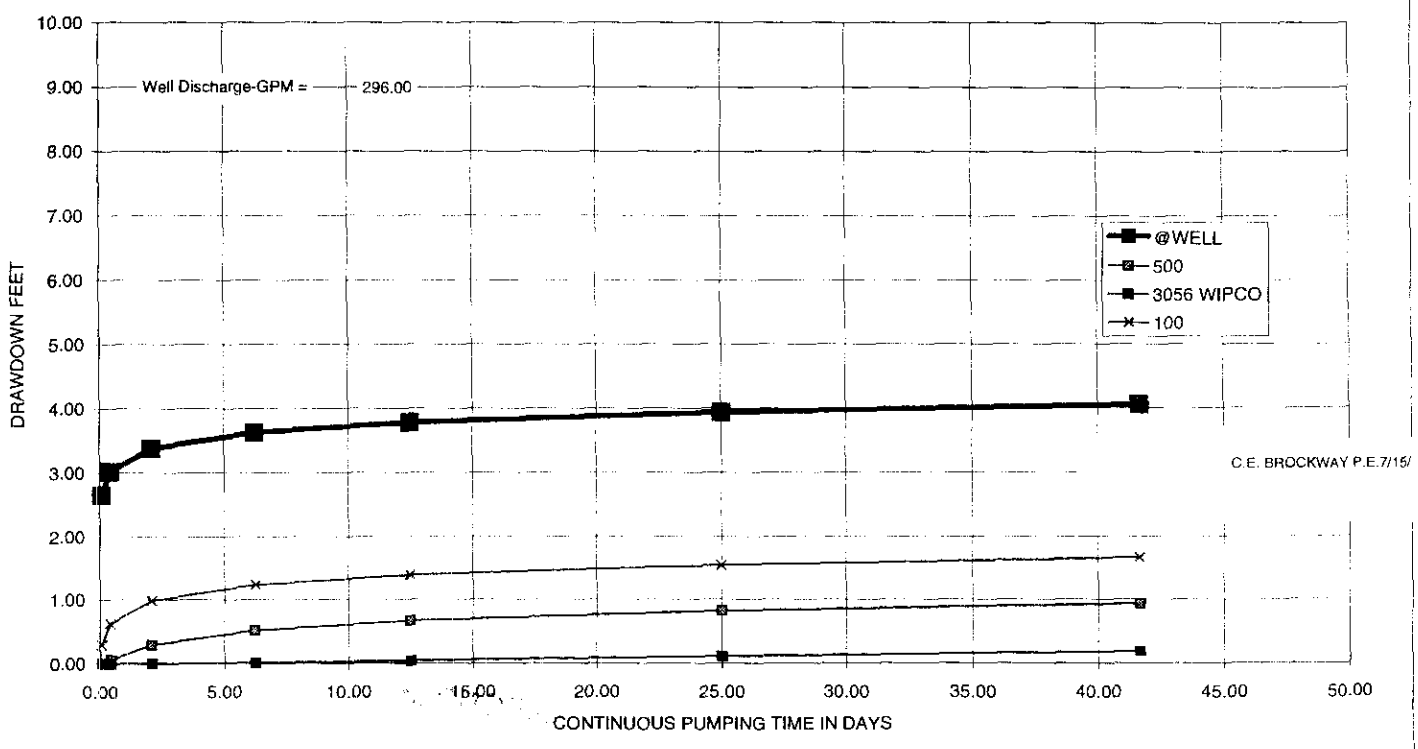
INPUT

r1=	0.500	FT	K=	67.05	FT/DAY
r2=	100	FT	K=	0.00077604	CFS/FT^2
r3=	500	FT	K=	5.00E+02	GPD/FT^2
r4=	3056	FT	WRIGHT SAT. DEPTH EST.=	300	FT
r5=	3056	FT	TRANSMISSIVITY=	150058	GPD/FT
S=	0.12		TRANSMISSIVITY=	2.32E-01	FT^2/SEC
T=	150058	GPD/FT	TRANSMISSIVITY=	20061.2	FT^2/DAY
Q/WELL	296.00	GPM =	0.660	CFS	

TIME HOURS	TIME t DAYS	U w/r1 0.5	WELL FUNCT. W(U)1	DRAW DOWN @WELL	SPEC. CAP GPM/FT	U W/r2 100	WELL FUNCT. W(U)2	DRAW DOWN @ 100	U W/r3 500	WELL FUNCT. W(U)3	DRAW DOWN @ 500	U W/r4 3056	WELL FUNCT. W(U)4	DRAW DOWN @ 3056 WIPCO
2	0.08	4.486E-06	11.7373	2.65	112	1.795E-01	1.3124	0.30	4.486E+00	0.0000	0.00	1.676E+02	0.0000	0.00
10	0.42	8.973E-07	13.3467	3.02	98	3.589E-02	2.7857	0.63	8.973E-01	0.2614	0.06	3.352E+01	0.0000	0.00
50	2.08	1.795E-07	14.9562	3.38	88	7.178E-03	4.3667	0.99	1.795E-01	1.3124	0.30	6.704E+00	0.0000	0.00
150	6.25	5.982E-08	16.0548	3.63	82	2.393E-03	5.4605	1.23	5.982E-02	2.2982	0.52	2.235E+00	0.0355	0.01
300	12.50	2.991E-08	16.7479	3.79	78	1.196E-03	6.1525	1.39	2.991E-02	2.9621	0.67	1.117E+00	0.1809	0.04
600	25.00	1.495E-08	17.4411	3.94	75	5.982E-04	6.8450	1.55	1.495E-02	3.6405	0.82	5.586E-01	0.4944	0.11
1000	41.67	8.973E-09	17.9519	4.06	73	3.589E-04	7.3556	1.66	8.973E-03	4.1453	0.94	3.352E-01	0.8249	0.19

HOURS	DAYS	@WELL	100	500	3056 WIPC	DISTANCE FEET
0	0.00	0	0	0	0	
2	0.08	-2.65	-0.30	0.00	0.00	
10	0.42	-3.02	-0.63	-0.06	0.00	
50	2.08	-3.38	-0.99	-0.30	0.00	
150	6.25	-3.63	-1.23	-0.52	-0.01	
300	12.50	-3.79	-1.39	-0.67	-0.04	
600	25.00	-3.94	-1.55	-0.82	-0.11	
1000	41.67	-4.06	-1.66	-0.94	-0.19	

ESTIMATED DRAWDOWN FROM JEROME CHEESE COMPANY WELL



Well Interference Analysis Proposed Jerome Cheese Well(s) Q=3.2 cfs (Hincks Transfer)

Estimated Well Drawdown

C.E. BROCKWAY July 15, 1999 Brockway Engineering P.L.L.C. THEISwellintceb

AQUIFER PROPERTIES BASED ON USBR GROUNDWATER MANUAL-FRACTURED IGNEOUS ROCK

EST. HOLE DIA. 12 INCHES

USING THEIS FORMULA S=114.6*Q/T*W(U)
S= DRAWDOWN IN FT
Q= PUMPING RATE GPM
T= COEFFICIENT OF TRANSMISSIBILITY GPD/FT
W(U)= WELL FUNCTION OF 'U'

W(U)=-.5772-LOGeU +U-U^2/(2*2!)+U^3/(3*3!)-U^4/(4*4!) .....
U=1.87*r^2*S/(T*t)
r=DISTANCE IN FT. FROM CENTER OF PUMPED WELL TO DRAWDOWN POINT
S=COEFFICIENT OF STORAGE
T=COEFFICIENT OF TRANSMISSIBILITY, GPD/FT
t= TIME SINCE PUMPING STARTED, DAYS

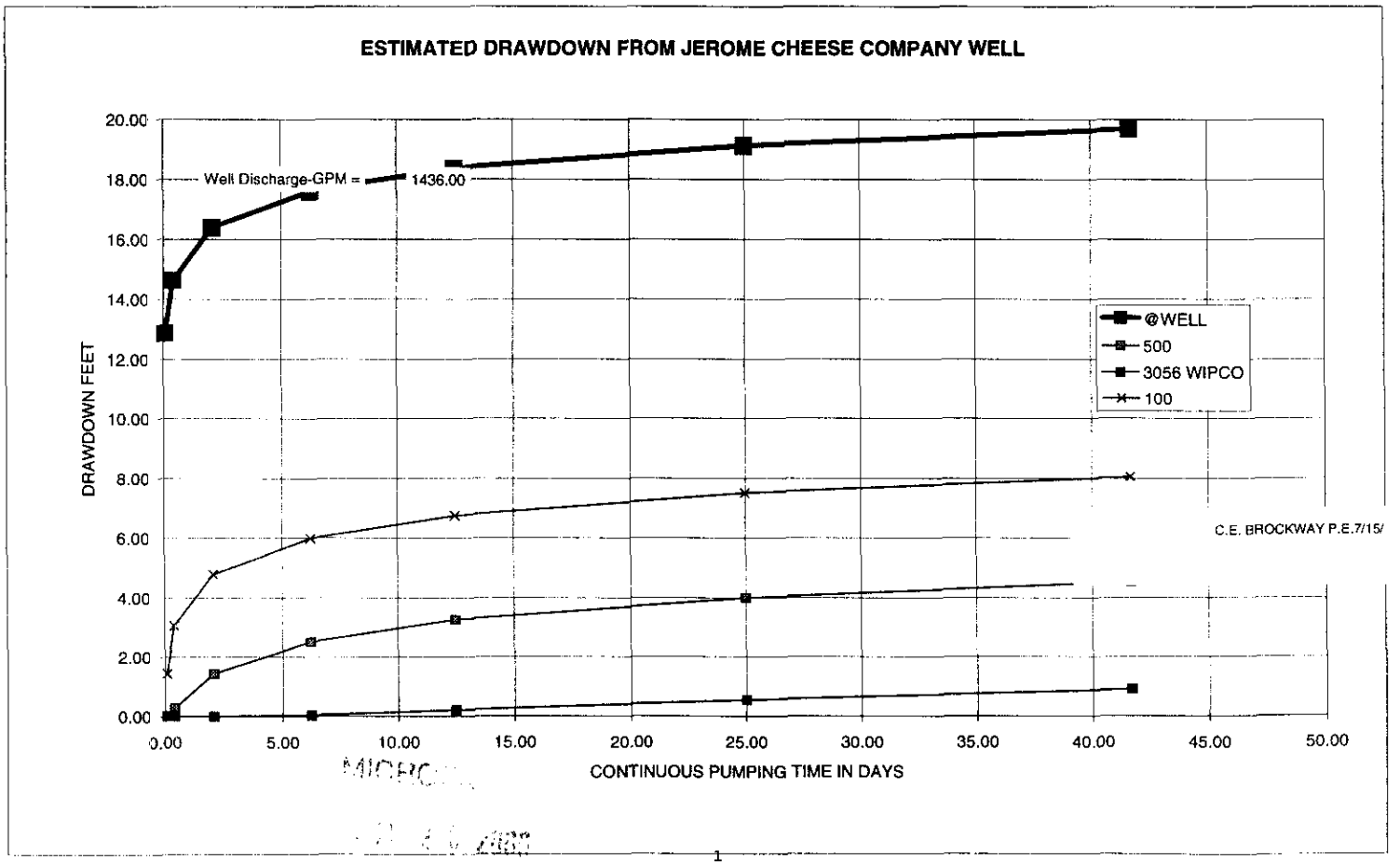
Department of Water Resources
APPLICANT'S
Exhibit 10
Date Admitted 7/27/99

INPUT

r1=	0.500	FT	K=	67.05	FT/DAY
r2=	100	FT	K=	0.00077604	CFS/FT^2
r3=	500	FT	K=	5.00E+02	GPD/FT^2
r4=	3056	FT	WRIGHT SAT. DEPTH EST.=	300	FT
r5=	3056	FT	TRANSMISSIVITY=	150058	GPD/FT
S=	0.12		TRANSMISSIVITY=	2.32E-01	FT^2/SEC
T=	150058	GPD/FT	TRANSMISSIVITY=	20061.2	FT^2/DAY
Q/WELL	1436.00	GPM =	3.200 CFS		

TIME HOURS	TIME t DAYS	U w/r1 0.5	WELL FUNCT. W(U)1	DRAW DOWN @WELL	SPEC. CAP GPM/FT	U W/r2 100	WELL FUNCT. W(U)2	DRAW DOWN @ 100	U W/r3 500	WELL FUNCT. W(U)3	DRAW DOWN @ 500	U W/r4 3056	WELL FUNCT. W(U)4	DRAW DOWN @ 3056 WIPCO
2	0.08	4.486E-06	11.7373	12.87	112	1.795E-01	1.3124	1.44	4.486E+00	0.0000	0.00	1.676E+02	0.0000	0.00
10	0.42	8.973E-07	13.3467	14.64	98	3.589E-02	2.7857	3.05	8.973E-01	0.2614	0.29	3.352E+01	0.0000	0.00
50	2.08	1.795E-07	14.9562	16.40	88	7.178E-03	4.3667	4.79	1.795E-01	1.3124	1.44	6.704E+00	0.0000	0.00
150	6.25	5.982E-08	16.0548	17.61	82	2.393E-03	5.4605	5.99	5.982E-02	2.2982	2.52	2.235E+00	0.0355	0.04
300	12.50	2.991E-08	16.7479	18.37	78	1.196E-03	6.1525	6.75	2.991E-02	2.9621	3.25	1.117E+00	0.1809	0.20
600	25.00	1.495E-08	17.4411	19.13	75	5.982E-04	6.8450	7.51	1.495E-02	3.6405	3.99	5.586E-01	0.4944	0.54
1000	41.67	8.973E-09	17.9519	19.69	73	3.589E-04	7.3556	8.07	8.973E-03	4.1453	4.55	3.352E-01	0.8249	0.90

HOURS	DAYS	@WELL	100	500	3056 WIPC	DISTANCE FEET
0	0.00	0	0	0	0	
2	0.08	-12.87	-1.44	0.00	0.00	
10	0.42	-14.64	-3.05	-0.29	0.00	
50	2.08	-16.40	-4.79	-1.44	0.00	
150	6.25	-17.61	-5.99	-2.52	-0.04	
300	12.50	-18.37	-6.75	-3.25	-0.20	
600	25.00	-19.13	-7.51	-3.99	-0.54	
1000	41.67	-19.69	-8.07	-4.55	-0.90	



Well Interference Analysis Proposed Jerome Cheese Well(s) Q=3.86 cfs(Sandy and Hincks Transfers)

Estimated Well Drawdown

C.E. BROCKWAY July 15, 1999 Brockway Engineering P.L.L.C. THEISwellintceb

AQUIFER PROPERTIES BASED ON USBR GROUNDWATER MANUAL-FRACTURED IGNEOUS ROCK

EST. HOLE DIA. 12 INCHES

Department of Water Resources
APPLICANTS
11
7/27/99

USING THEIS FORMULA S=114.6*Q/T*W(U)
S= DRAWDOWN IN FT
Q= PUMPING RATE GPM
T= COEFFICIENT OF TRANSMISSIBILITY GPD/FT
W(U)= WELL FUNCTION OF 'U'

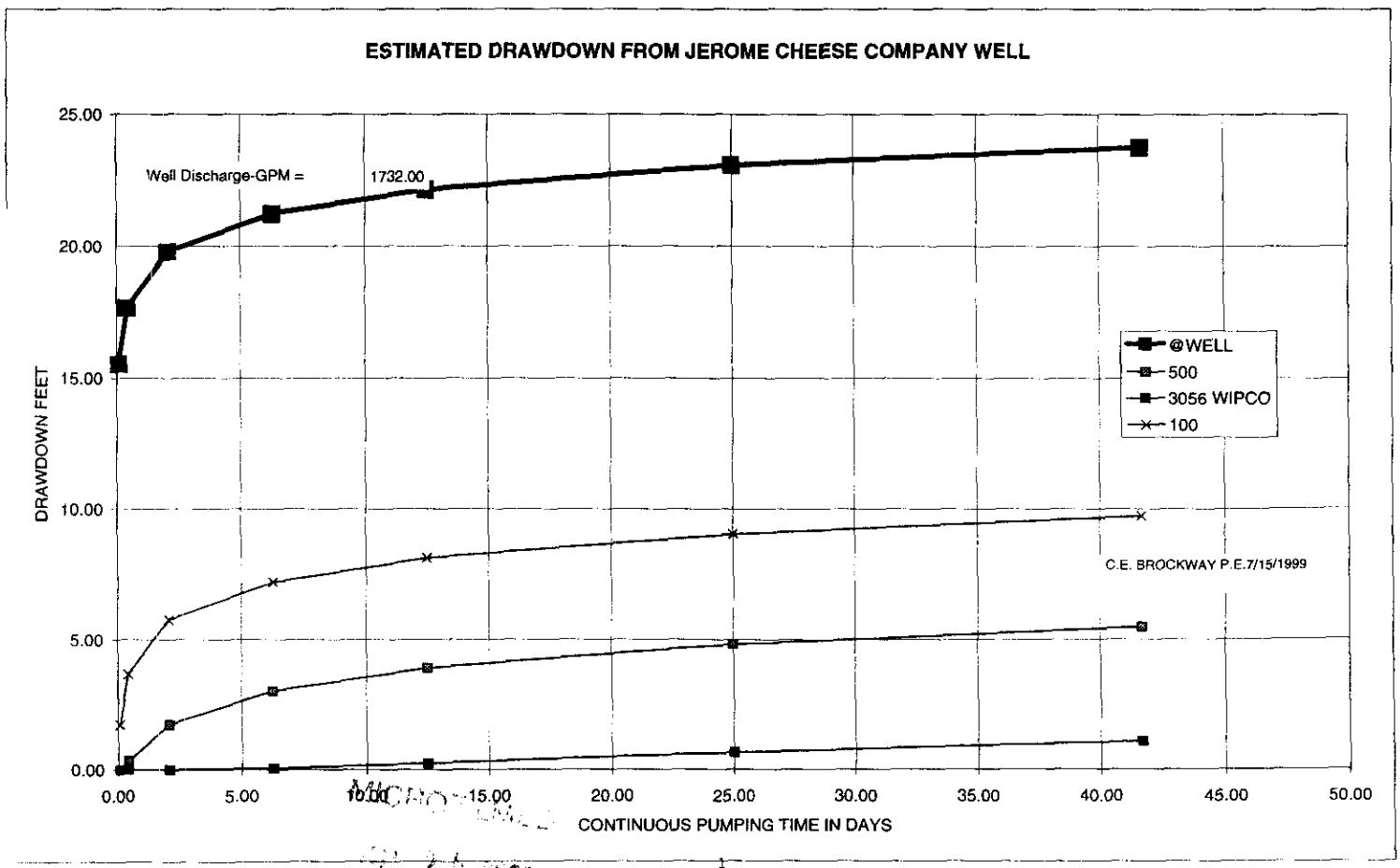
W(U)=-.5772-LOGeU +U-U^2/(2*2!)+U^3/(3*3!)-U^4/(4*4!) .....
U=1.87*r^2*S/(T*t)
r=DISTANCE IN FT. FROM CENTER OF PUMPED WELL TO DRAWDOWN POINT
S=COEFFICIENT OF STORAGE
T=COEFFICIENT OF TRANSMISSIBILITY, GPD/FT
t= TIME SINCE PUMPING STARTED, DAYS

INPUT

r1=	0.500	FT	K=	67.05	FT/DAY
r2=	100	FT	K=	0.00077604	CFS/FT^2
r3=	500	FT	K=	5.00E+02	GPD/FT^2
r4=	3056	FT	WRIGHT SAT. DEPTH EST.=	300	FT
r5=	3056	FT	TRANSMISSIVITY=	150058	GPD/FT
S=	0.12		TRANSMISSIVITY=	2.32E-01	FT^2/SEC
T=	150058	GPD/FT	TRANSMISSIVITY=	20061.2	FT^2/DAY
Q/WELL	1732.00	GPM =	3.86	CFS	

TIME	TIME	U	WELL	DRAW	SPEC.	U	WELL	DRAW	U	WELL	DRAW	U	WELL	DRAW
	t	w/r1	FUNCT.	DOWN	CAP	W/r2	FUNCT.	DOWN @	W/r3	FUNCT.	DOWN @	W/r4	FUNCT.	DOWN @
HOURS	DAYS	0.5	W(U)1	@WELL	GPM/FT	100	W(U)2	100	500	W(U)3	500	3056	W(U)4	3056 WIPCO
2	0.08	4.486E-06	11.7373	15.53	112	1.795E-01	1.3124	1.74	4.486E+00	0.0000	0.00	1.676E+02	0.0000	0.00
10	0.42	8.973E-07	13.3467	17.65	98	3.589E-02	2.7857	3.68	8.973E-01	0.2614	0.35	3.352E+01	0.0000	0.00
50	2.08	1.795E-07	14.9562	19.78	88	7.178E-03	4.3667	5.78	1.795E-01	1.3124	1.74	6.704E+00	0.0000	0.00
150	6.25	5.982E-08	16.0548	21.24	82	2.393E-03	5.4605	7.22	5.982E-02	2.2982	3.04	2.235E+00	0.0355	0.05
300	12.50	2.991E-08	16.7479	22.15	78	1.196E-03	6.1525	8.14	2.991E-02	2.9621	3.92	1.117E+00	0.1809	0.24
600	25.00	1.495E-08	17.4411	23.07	75	5.982E-04	6.8450	9.05	1.495E-02	3.6405	4.82	5.586E-01	0.4944	0.65
1000	41.67	8.973E-09	17.9519	23.75	73	3.589E-04	7.3556	9.73	8.973E-03	4.1453	5.48	3.352E-01	0.8249	1.09

HOURS	DAYS	@WELL	100	500	3056 WIPC	DISTANCE FEET
0	0.00	0	0	0	0	
2	0.08	-15.53	-1.74	0.00	0.00	
10	0.42	-17.65	-3.68	-0.35	0.00	
50	2.08	-19.78	-5.78	-1.74	0.00	
150	6.25	-21.24	-7.22	-3.04	-0.05	
300	12.50	-22.15	-8.14	-3.92	-0.24	
600	25.00	-23.07	-9.05	-4.82	-0.65	
1000	41.67	-23.75	-9.73	-5.48	-1.09	



Department of Water Resources
APPLICANT'S
Exhibit 12
Date Admitted

SCOTT F. McCLURE

EDUCATION

B.S. General Engineering, Idaho State University, 1971

Activities: Student Body President, Idaho State University 1969-1970

LICENSED AS A PROFESSIONAL ENGINEER IN THE STATES OF:

Idaho, Montana, Nevada, Wyoming, Washington, Utah, New Mexico, Oregon, Colorado, and Texas

PROFESSIONAL ORGANIZATIONS

Past National Director for NSPE

Past State Chapter President ISPE - Idaho Society of Professional Engineers - Past State and Chapter President

Past National Director ACEC - Consulting Engineers of Idaho

Past President - Consulting Engineers of Idaho

Member ASHRAE - American Society of Heating, Refrigeration, and Air Conditioning Engineers, Inc.

Past Chairman ISU EAC - Idaho State University Engineering Advisory Council

Member - State Board of Education - Engineering Advisory Council.

Member and Secretary State Board of Professional Engineers and Professional Land Surveyors

EXPERIENCE

1978 to Present

McClure Engineering Inc, President

Responsible for preparation of engineering design and specifications of mechanical and structural systems. Projects include HVAC, plumbing, and industrial process systems, requiring air handling, water, and steam distribution systems. Design projects include the design of mechanical systems for health care, educational, and institutional facilities, including those

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requiring special design considerations for cleanliness and humidity. Retrofit projects include those associated with hospital surgery areas, office buildings, and computer facilities. Mr. McClure also has considerable expertise in the area of boiler operation, having worked on coal, oil, natural gas, and wood-fired boiler installations. Mr. McClure is also familiar with design requirements of geothermal resource utilization, having worked on systems which utilize both direct heat exchange design and water-to-air and water-to-water heat pump facilities.
Other design projects include the steam and process piping for solid waste-fired boilers located in Heyburn, Idaho, and Livingston, Montana. Additional areas of expertise include monitoring for particulate emissions from combustion sources and conducting of boiler operations/efficiency classes for personnel from industry and educational institutions.

1975 to 1978
U & I Inc. Project Engineer

PROJECT - Limerock and Coke receiving and built transport system. System included facilities for unloading of railroad car stock piling of materials, transport of materials from stock piles to coke and limerock receiving hoppers, plus material handling, equipment for movement of limerock and coke into the lime kiln system. Design and installation of sugar production scales and material handling systems. System consisted of a stand-alone building capable of providing continuous inventory control for production from a 5,000 ton per day sugar processing facility.

PROJECT - Installation of lime kiln, dust control and wet scrubber particulate capture system. The system consisted of capture hoods, duct work and fan system for removal of dust from a lime kiln facility. Capture system was a wet scrubber. Liquid discharge was routed to flumes to assist in control of Ph of existing flume system.

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2003

PROJECT - Installation of a drybeet handling system, flume and beat washer system to deliver 15,000 tons per day of beets. System consisted of a dry truck unloading system, inclined belt for elevation of beets to the approximate equivalent level of the beet washers, delivery of beets into a short flume system, which included rock catcher and trash catcher facilities, and final discharge across to new silvers beet washing units.

PROJECT - Design and installation of a pressurized condensate return and boiler feed system for first effect evaporator condensate. System consisted of a pressurized condensate pumping system and integrated valve control system to allow for delivery of pressurized condensate from first effect evaporator directly into the boiler, without flashing of condensate and the condensate receiver tank. System included controls for monitoring of total dissolved solids to insure sugar solution is not returned directly to the boilers if an upset in process should occur. System resulted in reduction of fuel to boilers equal to approximately 10-15% of net fuel input. One system was placed on line.

Responsibilities and major projects were as follows:

PROJECT - Construction of particulate control facility for a 250,000 lb. per hour coal-fired boiler. Responsibility: Project Engineer. Work included review of all design, the supervision of construction crews and the inspection of all construction work. This job, requiring a complete water and material handling system for the installation of a wet scrubber emissions control system, also included the installation of the tallest free-standing fiberglass stack in the United States at the time of construction.

PROJECT - Conversion of pulp dryers from gas-fired units to multi-fuel fired units. Responsibility: Project Engineer. The construction requirements of this project centered around the

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conversion of two (2) existing beet pulp dryers from natural gas-firing to a system which would allow the firing of either pulverized coal #6 fuel oil, and/or natural gas. Work included the construction of a complete coal handling system including storage bunkers, elevators, hoppers and pulverizes, modification of the existing combustion chambers, installation and calibration of combustion and process control instrumentation, and the hands-on start-up of combustion systems and process equipment. Total first cost of this project was approximately $2 million.

PROJECT - Coal delivery system for pulverized coal combustion system, Idaho Falls, Idaho. Responsibility: Design/Project Engineer. This project involved the construction of a coal storage facility at the Idaho Falls sugar processing plant. Also, a coal delivery system for two existing bunkers was installed utilizing coal conveying equipment.

PROJECT - Plant Engineer, Idaho Falls and Moses Lake, Washington Sugar Processing Facilities. Responsibility: Process Analysis and Design. Responsibilities as Plant Engineer included the preparation of process balance and energy balance reports for both major food processing facilities. Minor projects also included the testing of combustion sources to determine airborne particulate emissions, and the design and installation of a pressurized condensate return system for the Idaho Falls facility.

1971 to 1974
United States Marine Corp., Combat Engineer Officer. Duties included supervision of personnel in the combat engineering platoon and serving as Assistant Division Engineer for the 1st Marine Division, Camp Pendleton, California.

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Summary of Jerome Cheese Water Transfers			
	Sandy Right	Hincks Right	Total
Water Right No.	36-07337E	35-08606	
Transfer No.	5401	5436	
Original Water Right			
County of Origin	Gooding	Bingham	
Acres irrigated	159 acres	303.5 acres	
Flow rate	3.18 cfs (159 inches)	6.07 cfs (303.5 inches)	
Annual volume	636 acre-feet/yr	1214 acre-feet/yr	
Portion Transferred to Jerome Cheese			
Acres dried up	33 acres	160 acres	193 acres
Flow rate	0.66 cfs (33 inches)	3.2 cfs (160 inches)	3.86 cfs (193 inches)
Annual volume	99 acre-feet/yr	480 acre-feet/yr	579 acre-feet/yr

Department of Water Resources
APPLICANT'S
Exhibit 13
Date Admitted 2/27/95

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2 3 2000

Department of Water Resources
APPLICANT'S
Exhibit 16
Date Admitted 2/27/45

JUN 1 3 1999

SECOND ADDENDUM TO AGREEMENT FOR SALE OF WATER RIGHT

On December 16, 1998, JOHN A. SANDY of Hagerman, Idaho ("Vendor") and DAVISCO FOODS INTERNATIONAL, INC., dba Jerome Cheese,of Jerome, Idaho ("Vendee") entered into an agreement (the "Original Agreement") for the purchase and sale of a portion of a certain water right owned by Vendor as described in the Original Agreement. A copy of the Original Agreement is attached hereto as Exhibit A.

The Original Agreement contemplated the transfer of the conveyed portion of the water right to the Vendee and approval thereof by the Idaho Department of Water Resources ("IDWR") within 120 days of the execution of the Original Agreement. Owing to protests subsequently filed against the transfer, this deadline has not been met.

On May 4, 1999, the Vendor and Vendee (collectively, the "Parties") entered into the *First Addendum to Agreement for Sale of Water Right*, which extended the deadline of the Original Agreement to July 15, 1999 (the "First Addendum"). A copy of the First Addendum is attached hereto as Exhibit B.

The Idaho Department of Water Resources has now issued an order resetting the hearing on the transfer application from June 8, 1999 to July 27 and 28, 1999. Consequently, a further extension of the deadline is now necessary.

The Parties each continue to desire the benefit of the bargain contained in the Original Agreement, and for that reason do hereby further extend the deadline contained in the Original Agreement until December 15, 1999.

The water right to be conveyed and transferred is as described in the following paragraph.

> The water right as owned by the Vendor prior to the conveyance is a licensed ground water right known by

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the IDWR as Water Right No. 36-07337E (or X36-07337E). It is licensed in the amount of 3.18 cfs (159 miner's inches) for irrigation use on 159 acres of land (at one miner's inch, or 0.02 cfs, per acre) between April 1 and October 31 in an annual volume totaling 636 acre-feet (equating to 4 acre-feet per acre). The portion of the water right subject to sale and transfer corresponds to that water previously used on 33 of the 159 acres. The annual volume which may be transferred is the consumptive use, to wit, 3 acre-feet per acre per year for each of those 33 acres. This equates to a total of 99 acre-feet per year. Thus, the annual volume of water to be transferred is three-quarters of the volume originally applied to and associated with the 33 acres. The flow quantity to be transferred is one inch per acre, the same as prior to transfer, for a total of 0.66 cfs (33 miner's inches). The purpose of use for the transferred portion of the water right will be commercial or industrial, and the period of use will be changed to year-round. The Vendor expressly agrees that the 33 acres of land formerly irrigated by the conveyed water right will either be dried up or irrigated with water from a different water right. The 33 acres from which water will be transferred is located within SW SE, §5, T8S R14E, B.M. in Gooding County, as more fully described in Transfer Application No. 5401 on file with the IDWR. The new place of use will be at the cheese plant located in NWNE, §25, T8S R16E, B.M. in Jerome County. The point of diversion for the transferred portion will be changed to two points of diversion in SENWNE, §25, T8S R16E, B.M. in Jerome County.

In all other respects, the Original Agreement is readopted and remains in force, subject to the extension and clarification contained in this ~~First~~ Second Addendum.

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JUL 25 2000

VENDOR

Date: 6/14/99

John A. Sandy

VENDEE

Date: 6-18-99

Jon Davis
General Manager
Davisco Food International, Inc.,
dba Jerome Cheese

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EXHIBIT A

Original Agreement

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FEB 28 2000

MEMORANDUM OF AGREEMENT DUPLICATE

THIS AGREEMENT Made and entered into this 16th day of December, 1998, by and between JOHN A. SANDY, Hagerman, Idaho (hereinafter "Vendor") and DAVISCO FOODS, INC., dba Jerome Cheese Company, P.O. Box 485, Jerome, Idaho (hereinafter "Vendee").

WITNESSETH:

WHEREAS, Vendor is the owner of a license, or permit, for approximately 150 inches of ground water, which ground water is appurtenant to Vendor's property located in Township 8 South, Range 14 E.B.M., Section 5, Gooding County, Idaho; and,

WHEREAS, Vendee is the owner of a cheese plant located in Jerome County, Idaho; and,

WHEREAS, Vendor desires to sell to Vendee, and Vendee desires to purchase from Vendor, 33 inches of the above described water for the sum of Eight hundred dollars ($800.00) per inch, for a total amount of Twenty six thousand four hundred dollars ($26,400.00).

NOW, THEREFORE, it is agreed between the parties as follows:

1. In consideration of the sum of $26,400.00, Vendor sells and Vendee purchases 33 inches of ground water.

2. The agreed purchase price of $26,400.00 shall be payable in cash.

3. The cash will be deposited in the Hobdey & Hobdey Trust Account and held until such time as the appropriate property descriptions have been identified and the Department of Water Resources has approved the transfer.

4. Vendor makes no warranties or guarantees that the transfer will be approved by the Department of Water Resources.

5. Vendee acknowledges that it has ascertained, from sources other than Vendor, the applicable zoning and other regulatory ordinances regarding the use of the 33 inches of water and Vendor has made no representations with respect thereto.

This agreement shall be binding upon the heirs, personal representatives, administrators, successors and assigns of the parties hereto.

In the event this water cannot be transferred within 120

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JUL 25 2000

DUPLICATE

days, this agreement shall be void and the money returned to Vendee. It being understood that the money shall be deposited in the Hobdey & Hobdey Trust Account, which is a non-interest bearing account. In the event the parties wish to extend this agreement beyond the 120 days hereof, they shall so indicate in writing. However, each party agrees to be responsible for paying one-half (1/2) the costs of attorney fees for the preparation of this agreement.

Vendee specifically acknowledges and agrees that Craig D. Hobdey is not representing it and Vendee is advised to seek legal counsel of its own choosing.

IN WITNESS WHEREOF, the parties have hereunto set their hands the day and year first above written.

John A. Sandy

SS# 519-56-8495

3104 S. 1200 E.
Hagerman, Idaho 83332

"VENDOR"

DAVISCO FOOD, INC.
dba Jerome Cheese Company

BY: _____

Print Name

Title: _____

MEMORANDUM OF AGREEMENT

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JUL 25 2000

EXHIBIT B

First Addendum

AUG 26 2000

FIRST ADDENDUM TO
AGREEMENT FOR SALE OF WATER RIGHT

On December 16, 1998, JOHN A. SANDY of Hagerman, Idaho ("Vendor") and DAVISCO FOODS, INC. dba Jerome Cheese Company of Jerome, Idaho ("Vendee") entered into an agreement (the "Original Agreement") for the purchase and sale of a portion of a certain water right owned by Vendor as described in the Original Agreement. A copy of the Original Agreement is attached hereto as Exhibit A. This First Addendum to Agreement for Sale of Water Right ("First Addendum") extends and clarifies the Original Agreement.

The Original Agreement contemplated the transfer of the conveyed portion of the water right to the Vendee and approval thereof by the Idaho Department of Water Resources ("IDWR") within 120 days of the execution of the Original Agreement. Owing to protests subsequently filed against the transfer, this deadline has not been met.

The Vendor and Vendee (collectively, the "Parties") each continue to desire the benefit of the bargain contained in the Original Agreement, and for that reason do hereby extend the deadline contained in the Original Agreement until July 15, 1999.

The Parties also wish to clarify and more fully describe the water right being conveyed and transferred. This clarification is not intended to alter the Original Agreement, but only to provide a more detailed description of the Parties' understanding. The water right to be conveyed and transferred is described as follows:

> The water right as owned by the Vendor (prior to the conveyance) is a licensed ground water right known by the IDWR as Water Right No. 36-07337E (or X36-07337E). It is licensed in the amount of 3.18 cfs for irrigation use on 159 acres of land (at one miner's inch, or 0.02 cfs, per acre) between April 1 and October 31 in an annual volume totaling 636 acre-feet (equating to 4

miner's inches per acre). The portion of the water right subject to sale and transfer corresponds to that water previously used on 33 of the 159 acres. The annual volume which may be transferred is the consumptive use, to wit, 3 acre-feet per acre per year for those 33 acres. This equates to a total of 99 acre-feet per year. Thus, the annual volume of water to be transferred is three quarters of the volume originally applied to and associated with the 33 acres. The flow quantity to be transferred is one inch per acre, the same as prior to transfer, for a total of 0.66 cfs. The purpose of use for the transferred portion of the water right will be commercial or industrial, and the period of use will be changed to year-round. The Vendor expressly agrees that the 33 acres of land formerly irrigated by the conveyed water right will either be dried up or irrigated with water from a different water right. The 33 acres from which water will be transferred is located within SW SE, §5, T8S R14E, B.M. in Gooding County, as more fully described in Transfer Application No. 5401 on file with the IDWR. The new place of use will be at the cheese plant located in NW NE, §25, T8S R16E, B.M. in Jerome County. The point of diversion for the transferred portion will also be changed to two points of diversion in SE NW NE, §25, T8S R16E, B.M. in Jerome County.

In all other respects, the Original Agreement is re-adopted and remains in force, subject to the extension and clarification contained in this First Addendum.

VENDOR

Date: 4/21/99

John A. Sandy

MICROFILMED
2000

VENDEE

Date: 5-4-99

John Davis
General Manager
Davisco Food, Inc.,
dba Jerome Cheese Company

Department of Water Resources
APPLICANT'S
Exhibit 17
Date Admitted 2/27/99

FIRST ADDENDUM TO AGREEMENT FOR SALE OF WATER RIGHT

On March 3, 1999, ROY HINCKS of Sterling, Idaho ("Vendor") and DAVISCO FOODS INTERNATIONAL, INC., dba Jerome Cheese, of Jerome, Idaho ("Vendee") entered into an agreement (the "Original Agreement") for the purchase and sale of a portion of a certain water right owned by Vendor as described in the Original Agreement. A copy of the Original Agreement is attached hereto as Exhibit A. This First Addendum to Agreement for Sale of Water Right ("First Addendum") extends and clarifies the Original Agreement.

The Original Agreement contemplated the transfer of the conveyed portion of the water right to the Vendee and approval thereof by the Idaho Department of Water Resources ("IDWR") within 120 days of the execution of the Original Agreement. Owing to protests subsequently filed against the transfer, this deadline has not been met.

The Vendor and Vendee (collectively, the "Parties") each continue to desire the benefit of the bargain contained in the Original Agreement, and for that reason do hereby extend the deadline contained in the Original Agreement until December 15, 1999.

The Parties also wish to clarify and more fully describe the water right being conveyed and transferred. This clarification is not intended to alter the Original Agreement, but only to provide a more detailed description of the Parties' understanding. The water right to be conveyed and transferred is described as follows:

> The water right as owned by the Vendor prior to the conveyance is a licensed ground water right known by the IDWR as Water Right No. 35-08606 . It is licensed in the amount of 6.07 cfs (303.5 miner's inches) for irrigation use on 303.5 acres of land (at one miner's inch, or 0.02 cfs, per acre) between April 1 and October 31 in an annual volume totaling 1214.0 acre-feet (equating to 4 acre-feet per acre). The portion of the water right subject to sale and transfer corresponds to that water previously used on 160 of the 303.5 acres. The annual volume which may be transferred is the consumptive use, to wit, 3 acre-feet per acre per year for each of those

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160 acres. This equates to a total of 480 acre-feet per year. Thus, the annual volume of water to be transferred is three-quarters of the volume originally applied to and associated with the 160 acres. The flow quantity to be transferred is one inch per acre, the same as prior to transfer, for a total of 3.20 cfs (160 miner's inches). The purpose of use for the transferred portion of the water right will be commercial or industrial, and the period of use will be changed to year-round. The Vendor expressly agrees that the 160 acres of land formerly irrigated by the conveyed water right will either be dried up or irrigated with water from a different water right. The 160 acres from which water will be transferred is located within SWNE (40 acres), SENE (36 acres), NWNW (7.7 acres), SWNW (36.3 acres) and SENW (40 acres) of §16, T4S R31E, B.M. in Bingham County, as more fully described in Transfer Application No. 5436 on file with the IDWR. The new place of use will be at the cheese plant located in NWNE, §25, T8S R16E, B.M. in Jerome County. The point of diversion for the transferred portion will be changed to two points of diversion in SENWNE, §25, T8S R16E, B.M. in Jerome County, Idaho.

In all other respects, the Original Agreement is readopted and remains in force, subject to the extension and clarification contained in this First Addendum.

VENDOR

Date: 6-14-99

Roy Hincks

VENDEE

Date: 6.18.99

Jon Davis
General Manager
Davisco Food International, Inc.,
dba Jerome Cheese

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JUL 25 2000

EXHIBIT A

Original Agreement

MICROFILMED
JUL 25 2000

DUPLICATE

MEMORANDUM OF AGREEMENT

THIS AGREEMENT Made and entered into this 3 day of MARCH, 1999, by and between Roy Hincks, Sterling, Idaho (hereinafter "Vendor") and DAVISCO FOODS, INC., dba Jerome Cheese Company, P.O. Box 485, Jerome, Idaho (hereinafter "Vendee").

WITNESSETH:

WHEREAS, Vendor is the owner of a license, or permit, for approximately 400 inches of ground water, which ground water is Water Rite number 35-08606 on file with the Idaho Department of Water Resources: and,

WHEREAS, Vendee is the owner of a cheese plant located in Jerome County, Idaho; and,

WHEREAS, Vendor desires to sell to Vendee, and Vendee desires to purchase from Vendor, 160 inches of the above described water for the sum of four hundred dollars ($400.00) per inch, for a total amount of Sixty Four thousand dollars ($64,000.00).

NOW, THEREFORE, it is agreed between the parties as follows:

1. In consideration of the sum of $64,000.00, Vendor sells and Vendee purchases 160 inches of ground water.

2. The agreed purchase price of $64,000.00 shall be payable as follows;

Two Thousand Dollars ($2,000.00) Ernest monies cash. And the balance of Sixty Two Thousand dollars ($62,000.00) upon completion of the appropriate property descriptions have been identified and the Department of Water Resources has approved the transfer.

3. The cash will be deposited in the Land Title & Escrow Inc. Trust Account and held until such time as the appropriate property descriptions have been identified and the Department of Water Resources has approved the transfer.

4. Vendor makes no warranties or guarantees that the transfer will be approved by the Department of Water Resources.

5. Vendee acknowledges that it has ascertained, from sources other than Vendor, the applicable zoning and other regulatory ordinances regarding the use of the 160 inches of water and Vendor has made no representations with respect thereto.

This agreement shall be binding upon the heirs, personal representatives, administrators, successors and assigns of the parties hereto.

In the event this water cannot be transferred within 120 days, this agreement shall be void and the money returned to Vendee. It being understood that the money shall be deposited in the Land Title & Escrow Inc. Trust Account, which is a non-interest bearing account. In the event the parties wish to extend this agreement beyond the 120 days hereof, they shall so indicate in writing. However, each party agrees to be responsible for paying one-half (1/2) the costs of the Land Title & Escrow Inc fees for the escrow account.

IN WITNESS WHEREOF, the parties have hereunto set their hands the day and year first above written.

Roy Hincks
SS# 518-32-2613
2851 W. 900 S
Sterling, Idaho 83210
"VENDOR"

DAVISCO FOOD, INC.
dba Jerome Cheese Company

BY: Jon Davis
MANAGER

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JAN 2 9 2020

IDAHO DEPARTMENT OF WATER RESOURCES

36-07337A

Department of Water Resources
APPLICANT'S
Exhibit 1B
Date Admitted 7/21/99



Section Lines

Quarter/Quarter Lines

Recommended Place of Use

N
W
E
S

GIS PLACE OF USE PRESENTATION
PHOTOGRAPHY: 1987 and/or 1988 NAPP
DATA ENTRY: APR, 1999
DOUGLAS JONES



Subject Property
Point(s) of Diversion
Section Lines
Quarter/Quarter Lines

Sandy Property
Post-Transfer Configuration

Douglas Jones, 3/22/99

GIVENS PURSLEY LLP

LAW OFFICES
277 North 6th Street, Suite 200
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Gary G. Allen
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Richard W. Jankowski
Karl T. Klein
David R. Lombardi
Kimberly D. Maloney
Kenneth R. McClure
Cynthia A. Melillo
Christopher H. Meyer
L. Edward Miller
Patrick J. Miller
Judson B. Montgomery
Angela K. Nelson
W. Hugh O'Riordan
Kenneth L. Pursley
Conley Ward
Stephanie C. Westermeier
Robert B. White

Raymond D. Givens
James A. McClure
OF COUNSEL

July 20, 1999

RECEIVED
JUL 19 1999

Robert E. Williams, III, Esq.
Fredericksen Williams & Meservy
117 S. Adams Street
P.O. Box 168
Jerome, ID 83338

Re: City of Jerome Annexation of Jerome Cheese Plant
Our File No. 5472-2

Dear Mr. Williams:

As you know, this law firm represents Jerome Cheese Company. Jerome Cheese has asked us to review the legality of the City of Jerome's proposed annexation of the property on which the Jerome Cheese plant is located (the "Property"), which annexation is to be finalized on July 20, 1999.

Our review of the applicable statutes and case law indicates that the City cannot annex the Property. A critical reason for this conclusion is because our understanding is the Property has never been divided into parcels of five acres or less as required by Idaho Code Section 50-222. If you are aware of contrary information, we would appreciate your letting us know.

Jerome Cheese requests that the City Council delay the finalization of the annexation ordinance for two weeks so that we can discuss and hopefully resolve the legality of the annexation.

In the event the City proceeds with the annexation, Jerome Cheese has authorized us

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Department of Water Resources
PROTESTANT'S
Exhibit A
Date Admitted 7/27/95

to proceed with litigation over this matter. Enclosed is a preliminary draft complaint in this regard.

Please call me or Ed Miller if you want to discuss this matter or if you have any questions.

Very truly yours,

Gary G. Allen

GGA:slc
Enclosure
S:\Clients\5472\2\Corr\Williams letter re complaint.wpd

MICROFILMED

Christopher H. Meyer
Gary G. Allen
GIVENS PURSLEY, LLP
277 North Sixth Street, Suite 200
P.O. Box 2720
Boise, Idaho 83701-2720
Telephone: 208-388-1200
Facsimile: 208-388-1300
Christopher H. Meyer Idaho State Bar ID# 4461
Gary G. Allen Idaho State Bar ID# 4366
S:\Clients\5472\2\Pleadings\complaint.wpd

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT FOR THE STATE OF IDAHO, IN AND FOR THE COUNTY OF JEROME

JEROME CHEESE COMPANY, a Minnesota corporation, Plaintiff, v. CITY OF JEROME, an Idaho municipal corporation, Defendant.	Case No. _____ COMPLAINT FOR DECLARATORY RELIEF

COMES NOW JEROME CHEESE COMPANY, by and through its attorneys of record, Givens Pursley LLP, who for a cause of action against Defendants complains and alleges as follows:

1. Plaintiff Jerome Cheese Company ("Jerome Cheese") is a Minnesota corporation qualified to do business in Idaho.

2. Defendant City of Jerome (the "City") is an Idaho municipal corporation.

3. Jerome Cheese operates a cheese processing plant (the "Plant") in Jerome County, Idaho, in the vicinity of the City.

4. On or about July 20, 1999, the City adopted Ordinance No. 877 (Bill No. 350) (the "Ordinance") purporting to annex Jerome Cheese into the City. A true and correct copy of the Ordinance is attached as Exhibit "A".

First Error: Property Not Divided Into Five Acre or Smaller Parcels

5. Idaho Code Section 50-222 requires, as a condition precedent to annexation, that the property be "laid off into blocks containing not more than five (5) acres of land each, whether the same shall have been or shall be laid off, subdivided or platted in accordance with any statute of this state or otherwise, or whenever the owner or proprietor or any person by or with his authority, has sold or begun to sell off such contiguous or adjacent lands by metes and bounds in tracts not exceeding five (5) acres.

6. The Plant is on a parcel of land of approximately 17 acres, which has never been subdivided by plat or other means into smaller tracts of land.

7. The land on which the Plant sits was once part of a larger parcel or larger parcels of land (the "Original Tract"). No part of the original tract has ever been divided into a tract or tracts of five acres or less.

Second Error: Annexation Not Reasonable

8. When Jerome Cheese was contemplating construction of the plant near Jerome, Jerome Cheese originally entered a purchase agreement to purchase property

several miles from the City, particularly because Jerome Cheese was concerned about the possibility of annexation and the attendant costs.

9. Jerome Cheese was induced to move the Plant closer to the City into an industrial park. Jerome Cheese was assured that the Plant would not be annexed into the City.

10. Jerome Cheese would not have moved the Plant to its current location had it believed that annexation was a possibility.

11. Jerome Cheese constructed the Plant in approximately 1993.

12. As set forth in the following paragraphs, Jerome Cheese places no burden on City services that would justify annexation.

13. Jerome Cheese does not receive fire protection from the City.

14. Jerome Cheese does not receive police protection from the City.

15. Jerome Cheese is in the process of removing itself from both City water and sewer service.

FIRST CAUSE OF ACTION

DECLARATORY RELIEF

16. Plaintiff realleges and incorporates by this reference the allegations of paragraphs 1 through 15 above.

17. Plaintiff contends that the Ordinance is void and illegal because, without limitation, 1) it attempts to annex property, no part of which has ever been divided into parcels of five acres or less, and 2) the annexation is unreasonable in that, without

limitation, Jerome Cheese does not receive fire or police protection from the City and is in the process of removing itself from City water and sewer service. Jerome Cheese therefore does not impose any burden on City services that would justify annexation. Plaintiff is informed and believes and thereon alleges that the City contends in all respect to the contrary.

18. An actual controversy existing therefore, Plaintiff requests a declaration that the Ordinance is null and void in all respects.

PRAYER

WHEREFORE, Plaintiff requests the following relief:

A. For an order declaring the Ordinance to be null and void and of no legal effect.

B. For attorneys' fees and costs pursuant to Idaho Code section 12-117, 12-120, 12-123 and other applicable authority.

C. For such other relief as the Court determines is just and proper.

DATED this _____ day of _____, 1999.

Respectfully submitted,

GIVENS PURSLEY LLP

By _____
Christopher H. Meyer
Gary G. Allen
Attorneys for Plaintiff Jerome Cheese Company

MEMORANDUM