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RECEIVED
JUL 11 2003
Department of Water Resources
Southern Region

Attorneys for Protestant Clear Springs Foods, Inc.

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF APPLICATION FOR
TRANSFER NUMBER 68993 in the Name of
JOHN BUSMAN—BUSMAN DAIRY,
Water Right Nos. 36-07044, 36-02676, 36-
07158, 36-10640

NOTICE OF WITHDRAWAL

Protestant, CLEAR SPRINGS FOODS, INC., by and through its attorneys of record, Barker Rosholt & Simpson, LLP, and the applicant John Busman—Busman Dairy, by and through his attorney of record, Givens Pursley, LLP hereby withdraw of the protest filed in regards to the Application for Transfer Number 68993 in the Name of John busman—Busman Dairy.

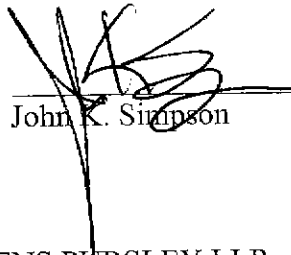
This withdrawal is conditioned upon representations by the Department of Water Resources regarding its preliminary review of the transfer consistent with Department policy and the Stipulation attached as Exhibit A. Clear Springs Foods, Inc. hereby withdraws its protest without prejudice, and based upon the Department issuing a Decision in the above-mentioned transfer consistent with the parties' Stipulation.

Clear Springs Foods has not waived its right to protest any other applications filed subsequently by the Applicant.

DATED this 9th ^{July} day of ~~May~~, 2003.

BARKER ROSHOLT & SIMPSON, LLP

By


John K. Simpson

GIVENS PURSLEY LLP

By


Christopher H. Meyer

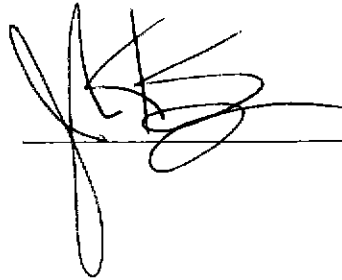
CERTIFICATE OF MAILING

I hereby certify that on this 2nd day of July, 2003, I served a copy of the foregoing
NOTICE OF WITHDRAWAL, be depositing same in the United States mail, postage prepaid, in
an envelope, addressed to the following:

Christopher H. Meyer
Givens Pursley LLP
P.O. Box 2720
Boise, ID 83701

Director
Idaho Department of Water Resources
P.O. Box 83720
Boise, ID 83720-0098

Original sent to:
Allen Merritt
Southern Region Manager
Idaho Department of Water Resources
1341 Fillmore Street, Suite 200
Twin Falls, ID 83301-3380


A handwritten signature in black ink, consisting of a large, stylized 'A' followed by a series of loops and a horizontal line extending to the right.

Mitigation Plan and Analysis

Transfer Number 68993

Applicant: John Busman, Busman Dairy

Prepared for the Applicant
by Charles E. Brockway
Brockway Engineering, P.L.L.C.

April 29, 2003

Description of transfer

This application for a water right transfer proposes to transfer 0.228 cfs and 60 acre feet per annum, of ground water right(s) currently utilized for irrigation in Section(s) 19 and 30, T8S R22E in Minidoka County to the Busman dairy in Section 7, T8S R16E in Jerome County. The Applicant is requesting the Department to transfer the entire quantity of water, but subject to the ongoing mitigation requirements outlined below as well as any other conditions imposed.

Director's Transfer Guidance

This transfer application has been prepared in accordance with the new Guidance Memorandum prepared by the Department. This guidance memorandum specifies additional requirements for documentation with respect to proof of beneficial use and non-forfeiture. All documentation required under this memoranda has been submitted to the Department.

The Administrator's Memorandum now requires a determination of historical consumptive use on irrigated land for all transfers contemplating a change in nature of use, for example, irrigation to commercial/stockwater for dairies. A determination has been made by IDWR of the historical consumptive use on the irrigated lands under water rights 36-07044, 36-02676, and 36-07158 applicable to this transfer. Based on the evaluation by Allen Merritt of the Southern Regional Office of IDWR, using FSA crop records and published consumptive use by Allen and Brockway (1983), the consumptive use on the 372 irrigated acres covered under these water rights is 2.69 af/yr. The allowable transfer volume for dairy use is equal to the average historical

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consumptive use for irrigation times the number of acres proposed to be dried up under the transfer. Therefore, for this transfer, the allowed transfer volume for the 20 acres proposed to be dried up is 53.8 af/yr.

The Applicant also acknowledges that the approval of the transfer will be conditioned in accordance with various requirements spelled out in that guidance.

Impacts on Snake River and springs

The location of current water use ("FROM well") and proposed water use ("TO well") are both within the Eastern Snake Plain aquifer area. (The TO well is actually more than one well in this instance, but is referred to in this analysis as the TO well for purposes of simplicity.)

Pumping at either site will impact the discharge of springs, tributaries and underground sources reaching the various reaches of the Snake River. When a point of diversion is moved within the aquifer, impacts on each of the reaches will differ, potentially affecting other water uses.

Consequently, the applicant has undertaken a hydrologic analysis comparing the pre-transfer and post-transfer impacts of the diversion. This analysis was a dynamic one, taking into account the time delay of changes in pumping on the various reaches. The purpose of the analysis is to help craft a mitigation plan which will avoid adverse impacts on other water uses.

The analysis was performed by C.E. Brockway P.E., Brockway Engineering P.L.L.C. Brockway Engineering utilized the Groundwater Rights Transfer Spreadsheet for impacts within the Eastern Snake Plain aquifer prepared by the University of Idaho using the ESRPA Ground Water Flow Model. This spreadsheet and associated response functions simulates the effect of the proposed transfer on each of the four (4) reaches of the Snake River: Ashton to Lewisville, Near Shelley to Neeley, Neeley to Minidoka, and Milner to King Hill.

In this case, Transfer spreadsheet predicts negative impacts (that is, an increase in depletion effect compared to pre-application conditions) on the Milner to King Hill reach. Each of the remaining three reaches would experience a positive effect (that is, an reduction in depletion effect compared to pre-transfer conditions). This is consistent with the basic premise of the model, which assumes that a negative effect in any given river reach will be offset by an equal and opposite effect in one or more of the remaining reaches.

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Given these results, this mitigation plan addresses only the negative impacts in the Milner-King Hill reach. No mitigation is required for any of the remaining reaches.

The spreadsheet predicts the transient impacts (that is, impacts over time) on selected reaches corresponding to pumping or recharge within specific nodes or cells within the ground water model area.

The cells corresponding to the TO well and the FROM well are selected and the volume pumped historically at the FROM well is determined from the appropriate allowed volumes from the water rights applicable to the acres to be dried up accounting for any CRP or Water Bank rental that may have occurred from these rights. The proposed future pumping volume at the TO well is entered.

The spreadsheet currently has a 150 year calculating period. It estimates impacts based on trimester (4 month) input in acre feet for the 150 year period (or 450 trimesters). The period begins on the date pumping of the first pre-transfer well was initiated. This is a sufficient time horizon for this proposed transfer.

Historic or proposed future pumping for four (4) individual wells including the TO well can be input into the spreadsheet thereby allowing the simulation of impacts from one or more individual transfer proposals and/or drying up of additional acres for mitigation of impacts. This procedure was utilized to simulate the additional positive impact of drying up additional acres at the Beckley farm to mitigate for the proposed transfer from the Larsen farm to the Busman dairy.

The allowed transfer volume per acre and the allowed volume for mitigation per acre were based on the historical consumptive use at each site. The consumptive irrigation requirement at the Larsen farm was determined by Allen Merritt of the Southern Region IDWR and the consumptive use on the Beckley farm was determined from cropping history which showed that alfalfa has been grown several years in the past on the acres proposed for mitigation. The Allen and Brockway (1983) consumptive use for alfalfa was therefore utilized to determine the allowable transfer volume for the dried up acres on the Beckley farm.

Summary of Methodology

1. For this transfer, the single cells in the ESRPA model representing the FROM point of diversion (Larsen farm, cell 9,22) and the TO point of

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diversion (Busman dairy, cell 10,13) were determined. The cell location for the mitigation acres (Beckley farm, cell 14,16)

2. Historical pumping volumes for the FROM well water rights were determined based on the priorities of each rights (see Data Entry sheet attached). These rights ceased pumping after 1999. The 'Without transfer' scenario assumed that the full transferred volume continued to be pumped for the period of the simulation and the 'with transfer' scenario assumed that the historically pumped transfer volume began in 2003 with 'reduced volume pumping' for mitigation for each year or period of years as shown on the attached Mitigation Plan spreadsheet. The annual pumping volume was assumed to be distributed equally over the three trimesters for each year.

Historical pumping for the mitigation acres dried up at the Beckley farm was assumed to commence in 1974 which is the priority date of the water right and pumped continuously through 2002 at which time this pumping ceased under the 'with transfer' scenario. The base pumping (without transfer scenario) for the Beckley acres was assumed to continue for the period of the simulation.

3. The base depletion curve for the 'without transfer' is calculated by the program for each trimester for the period of simulation.

4. The depletion at each Snake River reach caused by the combination of pumping at the TO well, the residual depletion from the FROM well and the net effect of drying up the mitigation acres was determined by the spreadsheet program. This is termed the depletion 'with transfer'.

5. Pumping at the TO node and the number of acres dried up for mitigation and the resulting simulated volume of pumping at the mitigation site (Beckley) was adjusted over the period of the simulation in single years or groups of years so that the 'with transfer' depletion curve (net effects curve) for the Milner-King Hill reach was within $\pm 5\%$ of the base curve or 'without transfer' curve for the period after the commencement of pumping from the TO well. This reduced pumping volume below the transferred volume and the reduced pumping due to drying up acres for mitigation constitutes the "hydrologic mitigation" for this transfer. The reduced pumping volumes were determined by trial and error until a reasonable 'fit' to the base curve (without transfer) to within $\pm 5\%$ was accomplished for the simulation period.

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6. The graphs for each of the 4 Snake River reaches show the comparison over time of the "net effect" on reach gains of the proposed transfer with the reduced pumping for mitigation. Also, the 'net percent transfer impact' for each reach is shown graphically.

7. The reduced pumping volume per year at the TO well and the acres dried up for mitigation was calculated for each year or group of years after commencement of pumping under the proposed transfer and is shown on the attached 'Mitigation Plan, Table 1'

Proposed mitigation

The applicant will reduce pumping under the transferred water rights at the new points of diversion (Busman dairy) and dry up acres at the mitigation site (Beckley) in a quantity sufficient to assure that no additional impact to the Milner to King Hill reach is experienced. The quantify of reduced pumping and number of acres required to be dried up will change from time to time according to a schedule set out below. This reflects the dynamic nature of the relationship between the aquifer and the river.

The annual pumping volume proposed for mitigation and number of acres to be dried up is shown on the Mitigation Plan, Table 1 attached.

The 'Stipulations Regarding Mitigation' attached reflect this mitigation plan.

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Stipulations Regarding Mitigation

Transfer Number 68993

John Busman-Busman Dairy

April 29, 2003

1. Mitigation

The Applicant has agreed to reduce pumping of those water rights under this water right transfer and to dry up additional previously irrigated acreage at the Beckley farm, and in a quantity sufficient to assure that no additional impact to the Milner to King Hill reach or any other reach is experienced. The quantity of reduced pumping and/or additional dry-up has been calculated and agreed to by the Parties. The reduced pumping schedule mitigates for the impact of the full annual volume applied for in the transfer application. The quantity of reduced pumping for each year and/or additional dryup is set out in the table(s) appended hereto. These mitigation requirements will be incorporated by the Department into the transfer approval and set out as permanent conditions on the affected water rights.

2. Monitoring of mitigation requirements

Discharge from the new well(s) will be monitored by the Applicant, in accordance with the Director's new water right transfer guidance or other applicable requirements as determined by the Director. The quantity of pumped volumes will be reported annually to IDWR.

3. Positive impacts on other reaches

The Department does not currently have a mechanism in place to recognize the positive impacts that a transfer may have on other river reaches within the Eastern Snake Plain Aquifer.

The Applicant and the Protestant have agreed that no "reach credits" will be recognized in conjunction with the approval of this transfer at this time. The Parties have agreed, however, that if such "reach credits" are recognized in the future by the Department or other appropriate entity, the

Applicant retains the right to apply for such credits based on this transfer. Likewise, the Protestant retains the right to oppose their recognition. If and when such credits are subsequently recognized, they will accumulate only from that point in time forward.

4. No reopening of mitigation calculation

The Applicant and the Protestant have agreed that the quantification of the mitigation obligation (as set out in the attached table(s)) will be permanent. The quantity of mitigation will not be subject to re-opening, re-examination, or re-calculation, except by mutual agreement and approval by the Department. This restriction applies even in the event that new data, new modeling or other information becomes available.

5. Substitute mitigation

As specified above, the mitigation will be provided in the form of reduced pumping and/or additional dry-up. No other method of achieving the mitigation may be substituted by the Applicant, except upon approval of the Department of an application for modification of the mitigation requirement as provided for by law. Moreover, the Protestant shall be given notice of such application.

In any event, the Protestant will not be required to accept any substitute form of mitigation that is less effective than the original mitigation. Specifically, any substitute mitigation must be "in kind" (meaning that it must provide a substitute supply of water—rather than some other kind of compensation—to make up for the depletions caused by the transfer); "in time" (meaning that the make-up water must be provided so as to reach the impacted area at the appropriate time to respond to the depletion caused by the transfer), and "in place" (meaning that the replacement must provide water to same area as the depletions are experienced). Finally, the substitute mitigation must provide water to the depleted impacted areas with the same degree of certainty and reliability as the original mitigation.

6. Consumptive use

The parties recognize that this transfer is premised upon the assumption of 100 percent consumptive use of water by the dairy. Consequently, the Applicant will be free to improve the efficiency of water

use in the future or make other changes under those rights that reduce or eliminate any return flows, without providing further mitigation.

John Busman
Busman Dairy

Bonnie B. Beckley

R. K. Beckley

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Date Entry

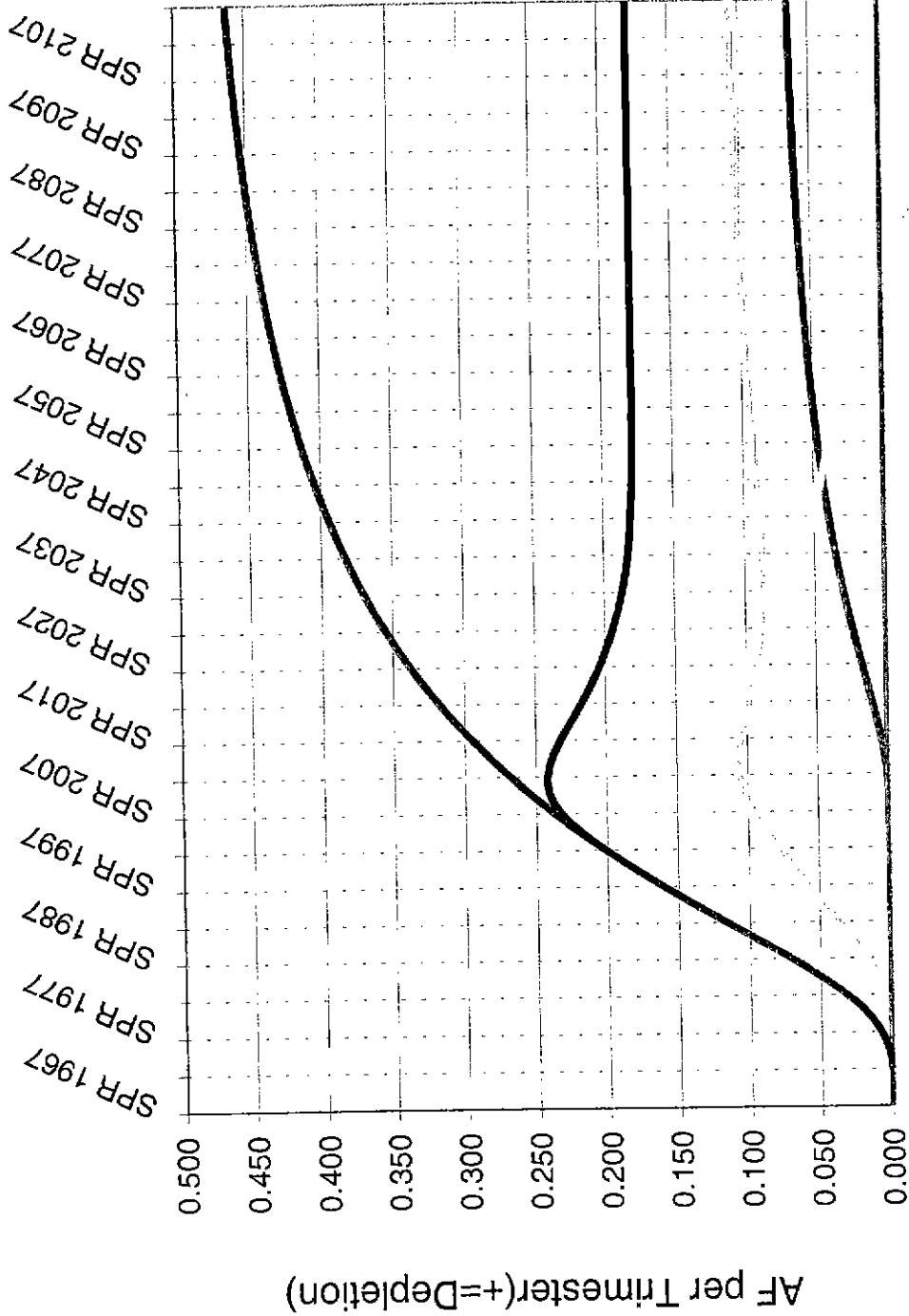
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WIN 2003	10.00	0.00	17.93	20.00	0.00	0.00
SPR 2004	15.00	0.00	17.93	20.00	0.00	0.00
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WIN 2004	15.00	0.00	17.93	20.00	0.00	0.00
SPR 2005	16.00	0.00	17.93	20.00	0.00	0.00
SUM 2005	16.00	0.00	17.93	20.00	0.00	0.00
WIN 2005	16.00	0.00	17.93	20.00	0.00	0.00
SPR 2006	16.60	0.00	17.93	20.00	0.00	0.00
SUM 2006	16.60	0.00	17.93	20.00	0.00	0.00
WIN 2006	16.60	0.00	17.93	20.00	0.00	0.00
SPR 2007	16.60	0.00	17.93	20.00	0.00	0.00
SUM 2007	16.60	0.00	17.93	20.00	0.00	0.00
WIN 2007	16.60	0.00	17.93	20.00	0.00	0.00
SPR 2008	20.00	0.00	17.93	20.00	0.00	0.00
SUM 2008	20.00	0.00	17.93	20.00	0.00	0.00
WIN 2008	20.00	0.00	17.93	20.00	0.00	0.00
SPR 2009	20.00	0.00	17.93	20.00	0.00	0.00
SUM 2009	20.00	0.00	17.93	20.00	0.00	0.00
WIN 2009	20.00	0.00	17.93	20.00	0.00	0.00
SPR 2010	20.00	0.00	17.93	20.00	0.00	0.00
SUM 2010	20.00	0.00	17.93	20.00	0.00	0.00
WIN 2010	20.00	0.00	17.93	20.00	0.00	0.00
SPR 2011	20.00	0.00	17.93	20.00	0.00	0.00
SUM 2011	20.00	0.00	17.93	20.00	0.00	0.00
WIN 2011	20.00	0.00	17.93	20.00	0.00	0.00
SPR 2012	20.00	0.00	17.93	20.00	0.00	0.00
SUM 2012	20.00	0.00	17.93	20.00	0.00	0.00
WIN 2012	20.00	0.00	17.93	20.00	0.00	0.00
SPR 2013	20.00	0.00	17.93	20.00	0.00	0.00
SUM 2013	20.00	0.00	17.93	20.00	0.00	0.00
WIN 2013	20.00	0.00	17.93	20.00	0.00	0.00
SPR 2014	20.00	0.00	17.93	20.00	0.00	0.00
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SPR 2015	20.00	0.00	17.93	20.00	0.00	0.00
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WIN 2015	20.00	0.00	17.93	20.00	0.00	0.00
SPR 2016	20.00	0.00	17.93	20.00	0.00	0.00
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WIN 2016	20.00	0.00	17.93	20.00	0.00	0.00
SPR 2017	20.00	0.00	17.93	20.00	0.00	0.00
SUM 2017	20.00	0.00	17.93	20.00	0.00	0.00
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SUM 2018	20.00	0.00	17.93	20.00	0.00	0.00
WIN 2018	20.00	0.00	17.93	20.00	0.00	0.00
SPR 2019	20.00	0.00	17.93	20.00	0.00	0.00
SUM 2019	20.00	0.00	17.93	20.00	0.00	0.00
WIN 2019	20.00	0.00	17.93	20.00	0.00	0.00
SPR 2020	20.00	0.00	17.93	20.00	0.00	0.00
SUM 2020	20.00	0.00	17.93	20.00	0.00	0.00
WIN 2020	20.00	0.00	17.93	20.00	0.00	0.00
SPR 2021	20.00	0.00	17.93	20.00	0.00	0.00
SUM 2021	20.00	0.00	17.93	20.00	0.00	0.00
WIN 2021	20.00	0.00	17.93	20.00	0.00	0.00
SPR 2022	20.00	0.00	17.93	20.00	0.00	0.00
SUM 2022	20.00	0.00	17.93	20.00	0.00	0.00
WIN 2022	20.00	0.00	17.93	20.00	0.00	0.00
SPR 2023	20.00	0.00	17.93	20.00	0.00	0.00
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SPR 2024	20.00	0.00	17.93	20.00	0.00	0.00
SUM 2024	20.00	0.00	17.93	20.00	0.00	0.00
WIN 2024	20.00	0.00	17.93	20.00	0.00	0.00
SPR 2025	20.00	0.00	17.93	20.00	0.00	0.00
SUM 2025	20.00	0.00	17.93	20.00	0.00	0.00
WIN 2025	20.00	0.00	17.93	20.00	0.00	0.00

July 2, 2003

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Hydrologic Response--Heise/Ashton to Lewisville

Transfer No: 68993 Applicant: Bussman/Larsen



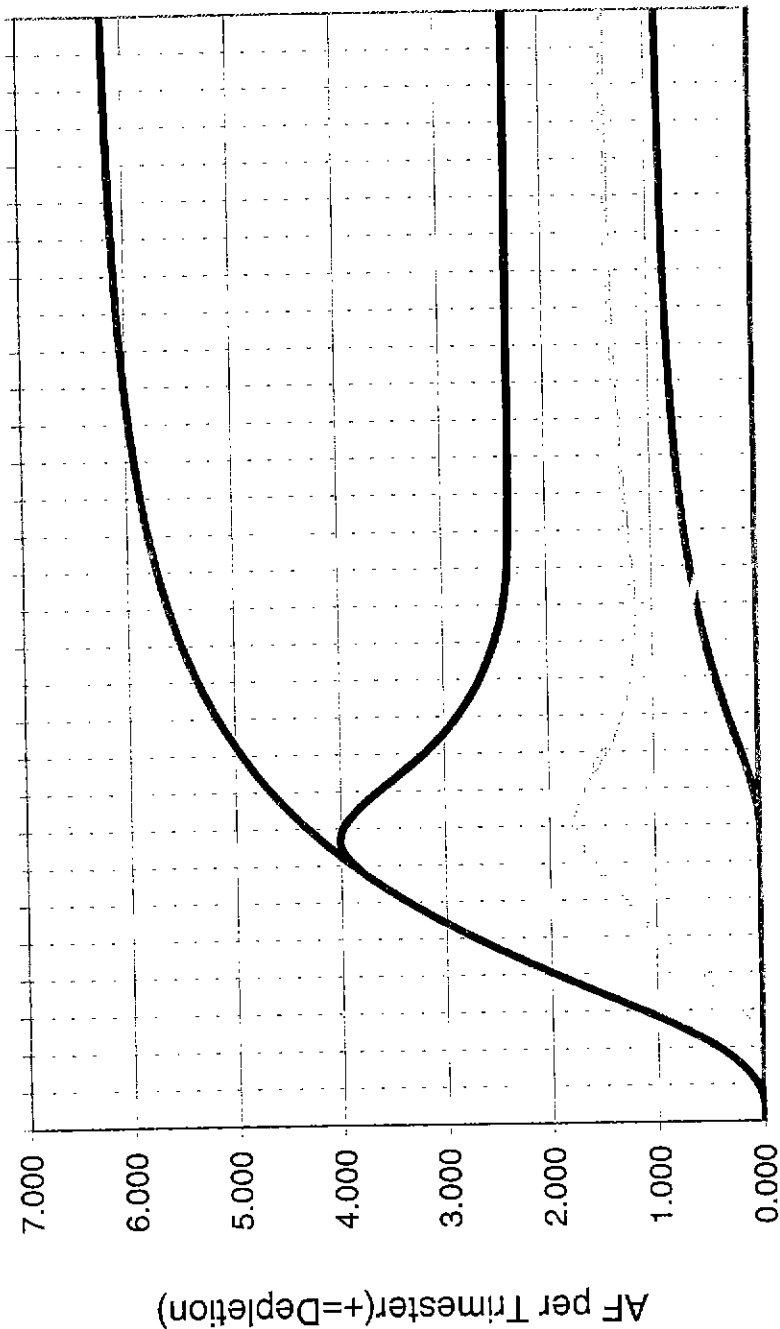
Legend:

- Total Effect With Transfer
- TO Well Effects
- FROM 2 Well
- FROM 3 Well
- FROM 1 Well
- Total Effect Without Transfer

Hydrologic Response--Near Shelley to Neeley Reach

Transfer No: 68993 Applicant: Bussman/Larsen

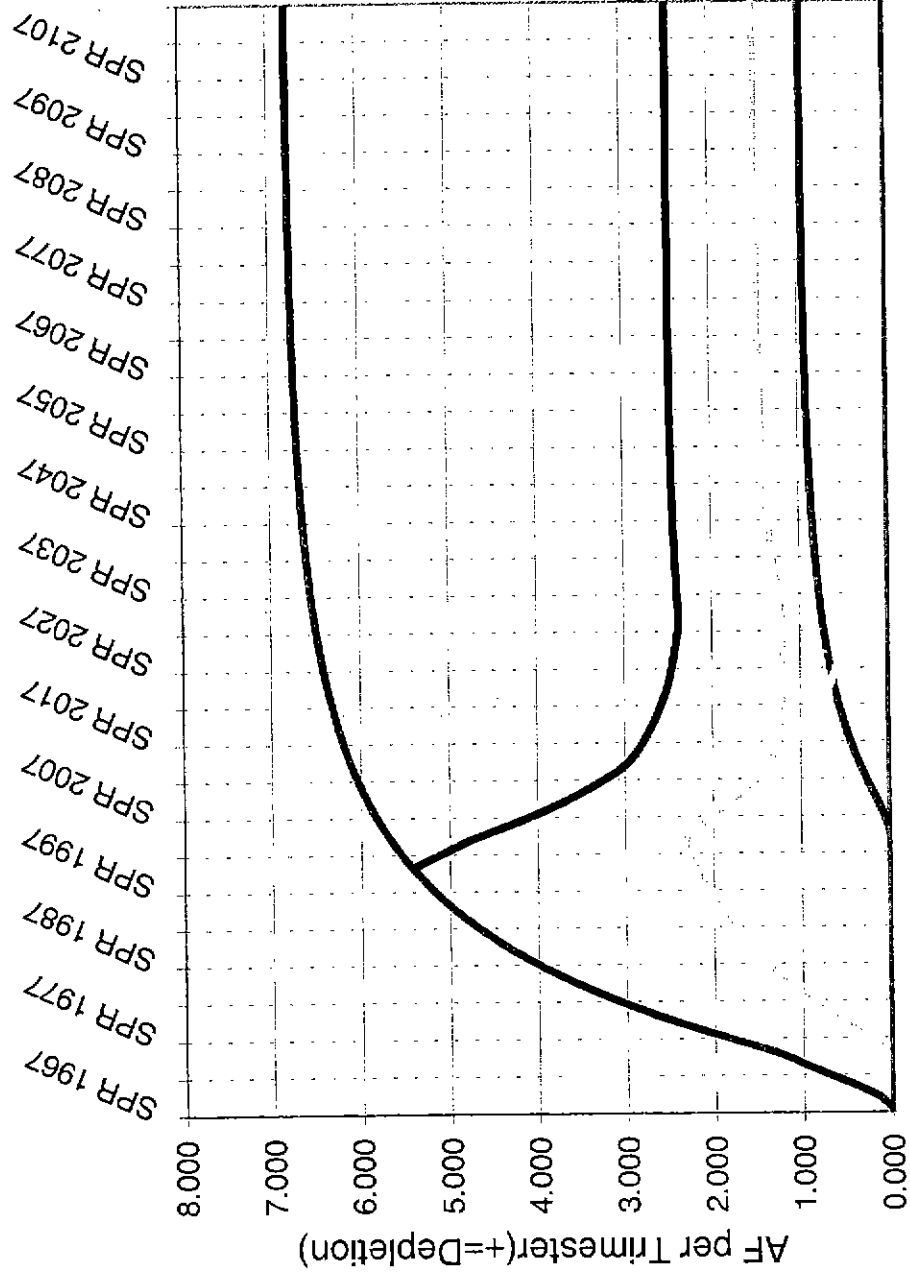
SPR 1967 SPR 1977 SPR 1987 SPR 1997 SPR 2007 SPR 2017 SPR 2027 SPR 2037 SPR 2047 SPR 2057 SPR 2067 SPR 2077 SPR 2087 SPR 2097 SPR 2107



— Total Effect With Transfer — TO Well Effects — FROM1 Well
 — FROM2 Well — FROM3 Well 1 — Total Effect Without Transfer

Hydrologic Response--Neeley to Minidoka

Transfer No: 68993 Applicant: Bussman/Larsen



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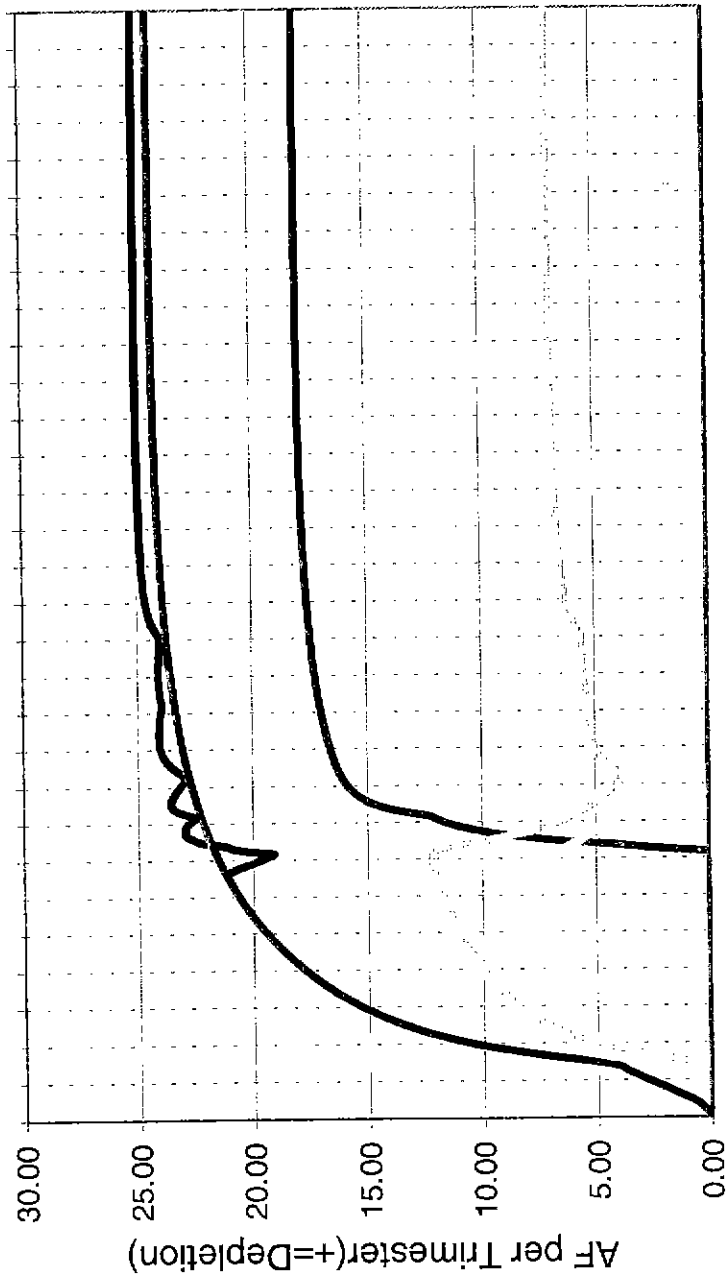
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Hydrologic Response-- Milner to King Hill Reach

Transfer No. 58993

Applicant: Bussman/Larsen

SPR 1967 SPR 1977 SPR 1987 SPR 1997 SPR 2007 SPR 2017 SPR 2027 SPR 2037 SPR 2047 SPR 2057 SPR 2067 SPR 2077 SPR 2087 SPR 2097 SPR 2107



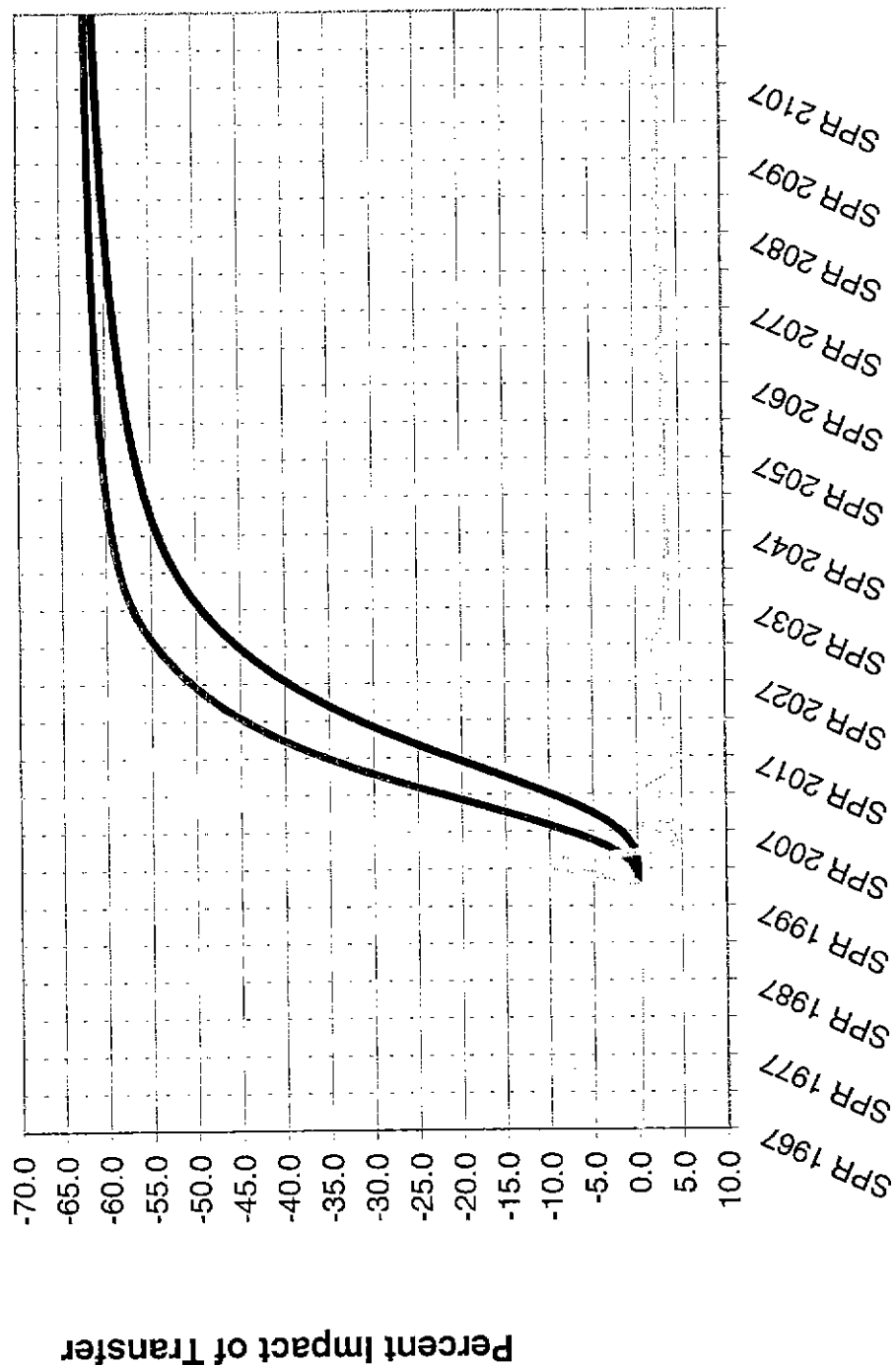
— Total Effect With Transfer
FROM1 Well
FROM3 Well

— TO Well Effects
FROM 2 Well
— Total Effect Without Transfer

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Net Percent Transfer Impact
Transfer No: 68993 Applicant: Bussman/Larsen



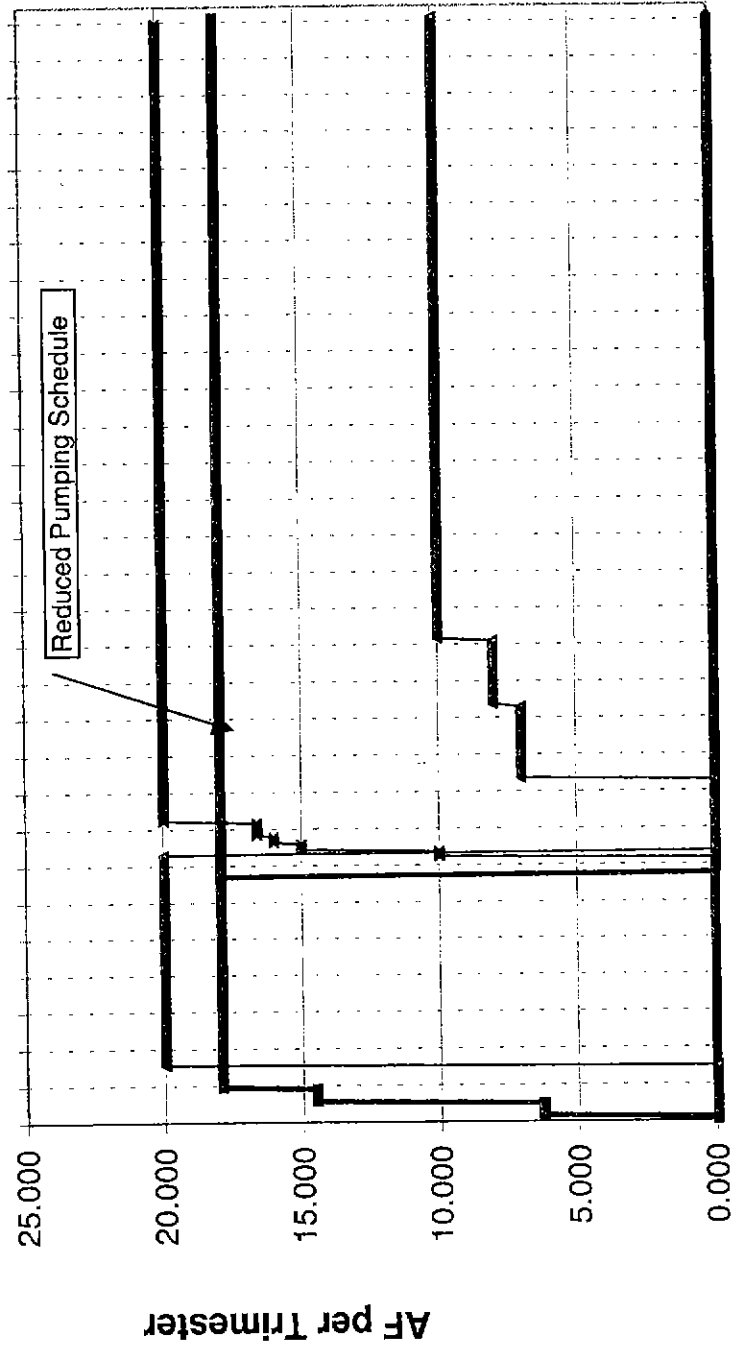
Heise/Ashton to Lewisville Near Shelley to Neeley Neeley to Minidoka Milner to King Hill

Pumping and Mitigation Schedule

Transfer No: 88993

Applicant: Bussman/Larsen

SPR 1967 SPR 1977 SPR 1987 SPR 1997 SPR 2007 SPR 2017 SPR 2027 SPR 2037 SPR 2047 SPR 2057 SPR 2067 SPR 2077 SPR 2087 SPR 2097 SPR 2107



TO Well From 1 Well w/ Transfer From 1 Well wo/Transfer From 2 Well (Mitigation)

IDAHO WATER COMPANY
AGREEMENT FOR PURCHASE AND SALE OF WATER RIGHT

THIS AGREEMENT is made and entered into this 24th day of April by and between Del Kohtz Idaho Water Company (hereinafter "Seller") and John Busman & Busman, Inc. hereinafter ("Buyer"). The seller, Del Kohtz discloses that he is a licensed real estate agent acting herein as principal for his own account and not representing or acting as an agent for the buyer.

TERMS AND CONDITIONS

1. The Sellers, in consideration of the terms contained herein, do hereby contract and agree to sell and convey to the Buyers and the Buyer does hereby agree to buy from the Sellers 60 acre feet/anum consumptive of Idaho Water Right 37-7331 # _____ and the water appurtenant thereto, for \$ _____ per acre foot consumptive or _____.
2. The total purchase price shall be \$ _____. The entire purchase price shall be paid on the closing date described in paragraph 5 below, less 15% finders fee and down payment paid at signing. Payment of \$ _____ signing.
3. This Agreement for Purchase and Sale of said license is contingent upon and subject to approval of the application for transfer by the Department of Water Resources. If the application is not approved, this Agreement shall become null and void.
4. The closing of this transaction and delivery of the executed Assignment to Buyer and the entire purchase price for each contract to Seller shall take place at the law offices of Ling, and Robinson, 615 H Street, Rupert, Idaho, within thirty (30) days of Buyer's receipt of approval from the Department of the application for transfer.
5. The Buyers shall be given possession and use of the water right and the water appurtenant thereto, upon closing.

6. In the event that the Buyers are unable to close this transaction for any reason, the Buyers agree they will execute any documents necessary to transfer the water right back to the Sellers. Non-payment of this contract and buyers refusal to transfer the water back to seller shall give the seller a first lien on buyers property to which the water is transferred for the amount of the water purchase.

7. In the event of any suit proceeding by either party against the other party, in any way arising out of this agreement, the prevailing party shall be awarded their reasonable attorney fees and costs.

8. Each party agrees to pay one-half of any costs incurred in executing this document. These costs shall not be more than \$150.00 each.

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

10. Buyer understands that if Kohtz is not at fault for the failure of his transfer due to protests or other factors beyond Kohtz' control, Kohtz shall charge an hourly fee of \$50.00 for the preparation and presentation of the application for transfer. This includes travel time and attendance of hearings on buyer's behalf. These monies will come out of the finder's fee charged at signing. If transfer is accomplished no hourly fee will be charged. If Kohtz fails to accomplish the desired transfer with this or other water rights the upfront money will be refunded. Buyer understands that attorney and consultant fees authorized by buyer in the case of protests and hearings on their water transfer are to be paid by the Buyer.

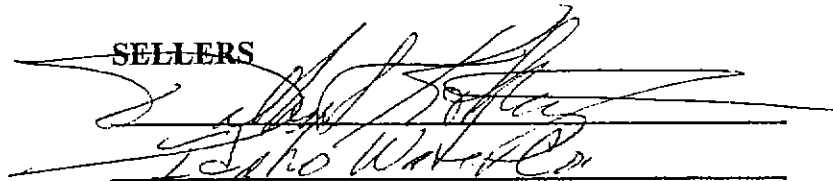
11. Del Kohtz has my permission to make needed changes to the Water transfer application that is the result of this contract to facilitate the process of transferring the water. The changes made will not materially change the amount of money buyer has to pay, or the amount of water buyer receives.

12. Kohtz (Idaho Water Company) has no control over the amount of mitigation or writedown IDWR will require of Buyers particular transfer therefore the amount Buyer pays is based on the amount of water transferred out of the original Water Right.

OTHER PROVISIONS

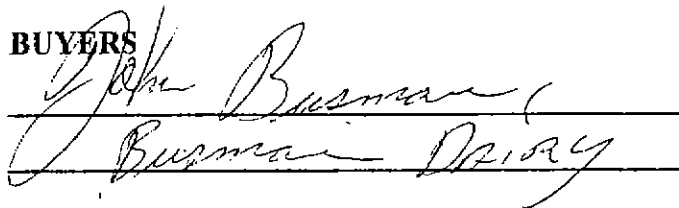
IN WITNESS WHEREOF the parties have caused their names to be subscribed
on the dates set forth above.

SELLERS



John White

BUYERS



Busman Dairy

IDAHO WATER COMPANY

1135 Valley Road South

Eden, Idaho 83325

(208) 825-5617

Cells 410-0438 or 431-5617

OPTION AGREEMENT FOR PURCHASE AND SALE OF WATER RIGHT

THIS AGREEMENT is made and entered into this April 3, 2003

by and between Bona Bonnit Beckley
(hereinafter "Seller") and Del Kohtz hereinafter "Buyer").

The buyer, Del Kohtz discloses that he is a licensed real estate agent acting herein as principal for his own account and not representing or acting as an agent for the buyer.

TERMS AND CONDITIONS

1. The Sellers, in consideration of the terms contained herein, do hereby contract and agree to sell and convey to the Buyers and the Buyer does hereby agree to buy from the Sellers Idaho Water Right 37-7331 and the water appurtenant thereto, for \$1 per acre. Land not included

2. The total purchase price shall be the entire purchase price shall be paid on the closing dates described in paragraph 4 below.

3. This Agreement for Purchase and Sale of said license is contingent upon and subject to the IDWR finding that the Water Right is valid and transferable. If the Water Right is invalid or non-transferable, this Agreement shall become null and void.

4. The Buyer desires to buy the personal property, the Water Rights, in separate tracts in order as agreed upon by both parties. Each transfer will be closed separately as they are paid for. This contract will be the standard contract and price for each transfer. The Buyers shall be given possession and use of the portion of the water right and the water appurtenant thereto, upon the closing of each transfer.

The remaining Water Rights shall remain the property of the seller until they are paid for and so forth until the entire Water Right is sold.

5. In the event of any suit or proceeding by either party against the other party, in any way arising out of this agreement the prevailing party shall be awarded their reasonable attorney fees and costs.

6. Option: Seller understands Buyer is transferring the water appurtenant to Sellers property to another property. Buyer shall have 365 days from the date of signing this contract to complete and close the transfers. If IDWR has not completed the transfers by the end of the option period the contract may be extended by the Buyer to complete the transfers by paying interest of 4.5 % on the unpaid balance.

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

OTHER PROVISIONS

All water will not change title until paid for. Water will be paid for before Water Resources puts the transfer in the data base

IN WITNESS WHEREOF have caused their names to be subscribed on the dates set forth above.

*PENDING FSA
APPROVAL*

*R. H. Beckley
Bonnie Beckley*

Seller

Buyer

Evaluation of Sufficiency of Information Submitted (Transfer 68993 in the name of John Busman -- Busman Dairy)

This transfer initially proposes to dry up 20 acres of land (60 afa of CU water) which is a portion of a PPU of 372 acres known as the Larsen Farm. This farm is irrigated using rights 36-7044, 36-2676 and 36-7158 from ground water. The water proposed to be converted from irrigation is proposed to be used for stockwater and commercial uses at an existing dairy currently partially covered under decree 36-10640. The transfer proposes to move the water across the ESPA approximately 36 miles down gradient toward the west to the site of the dairy where the water will be combined with the existing right. The transfer will tie all rights in a common system served by three existing wells at the site of the dairy. The water being transferred is assumed to be totally consumptive.

The application has been augmented by a mitigation plan involving drying up of initially 21.1 acres on the Beckley property (near Dietrich) approximately 21.4 miles NE of the dairy site. These acres are a portion of the place of use of right 37-7331 recently recommended in the SRBA. Recommendation for 37-7331 notes that the right is combined with AFRD#2 and BWCC shares however further review based on submittal of the stock certificates for Beckley's shares in BWCC show that the shares are associated with adjoining land but the land involved in the transfer is primarily supplied water from right 37-7331.

Authority to File:

The subject land being dried up involved in transfer is owned by John and Vivian Larsen. The file contains an agreement for purchase and sale of subject lands from John and Vivian Larsen to Del Kohtz. Also in the file is an agreement for purchase and sale of 60 afa of water from subject rights from Del Kohtz to John Busman. (60 afa equates to 20 acres of the original place of use based on CU of 3 afa/acre)

The subject land on the Beckley property involved in the mitigation plan is owned by R.K. and Bonnie Beckley. The file contains an option agreement between the Beckleys and Del Kohtz for purchase of a portion of right 37-7331. **Purchase of Land not included.** FSA is the lien holder for the Beckley property and there is a statement in the file approving sale of 40 acres worth of water subject to the proceeds being applied to the loan until FSA is paid in full. The file also contains an agreement for purchase and sale of 60 afa consumptive water being a portion of 37-7331 between Del Kohtz and John Busman of Busman Dairy.

Water Right Validity:

All rights involved in the transfer from the Larsen property have been recently decreed in the SRBA with dates of partial decrees ranging from 12/ 1996 to 1/1998. Forfeiture does not appear to be an issue. Included with the application are documents evidencing the recent use of the irrigation rights in years 1996 through 2000.

The right involved in the transfer from the Beckley property for mitigation has been recently recommended in the SRBA but not yet partially decreed. The file includes an evaluation of the consumptive nature of the right with use as recent as 2002. Forfeiture does not appear to be an issue.

Enlargement of Use:

Due to the irrigation rights being changed to commercial and stockwater needs an analysis of the historical use information has been made for both the Larsen farm and the Beckley farm. Based on this analysis the consumptive use allowable to be transferred from the Larsen farm should be limited to no more than 2.69 afa per acre of dried up land for conversion of nature of use. The consumptive use for the fields involved in the transfer on the Beckley property should be limited to no more than 2.84 afa per acre for the lands being dried up for this transfer.

Injury to Other Water Rights:

Included with the application is a proposed mitigation plan prepared by Brockway Engineering. The plan is based on modeling of the ESPA. The plan involves a stepped increase of use at the Busman dairy up to the applied for amount (60 afa being move to the dairy) after several years in combination with an

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immediate none use of a portion of the Beckley right (21.1 acres) with a stepped increase of allowable use over several years up to an allowable 10.55 acres with a permanent none use of 10.55 acres. The plan acknowledges the historical use of the Larsen rights and historical use on the Beckley property.

Local Public Interest:

The dairy has existed for several years and continues to provide jobs and tax base for local economy. No adverse impacts identified. Transfer is based on total consumption of water however it is likely a small portion of water diverted will be returned to aquifer.

Beneficial Use/Conservation of Water Resources:

No Issue Identified.

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

Other issues:

Proposed use within WD 130 and the watermaster has provided comment based on the present submittal.

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