

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

RECEIVED

APR 29 2026

DEPT. OF WATER RESOURCES

NOTICE OF PROTEST
Application for Transfer 89563

April 29, 2026

RECEIVED

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WATER RESOURCES
WESTERN REGION

1. Matter being protested

Application for Transfer 89563 (involving Water Right 51-02186) filed by Big Sky Dairy.

2. Name of protestant

United States Department of the Interior
Bureau of Land Management
Idaho State Office
1387 South Vinnell Way
Boise, Idaho 83709-1657

3. Protestant's Representative for service (if different than protestant)

Fredric W. Price (contact person)

4. Service mailing address

same as above

5. Service telephone no.

(208) 373-3831

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

Pursuant to Idaho Code 42-222(1), BLM files this protest. On February 10th, 2026, Big Sky Dairy ("Applicant") filed application for transfer 89563 involving water right 51-02186. The Application for Transfer proposes to add a point of diversion, change nature of use, and change period of use. The Applicant does not propose to add a place of use ("POU"), however, new legal descriptions, T09S, R12E, S28, NE¼ are listed. BLM believes this is a mistake. Perhaps these POUs should be listed in S29? These new legal descriptions are located entirely on BLM. The Applicant is not authorized to use BLM land. Trespass on federal land is a prohibited act (43 CFR §2808.10(a)).

Although Idaho Code § 42-222(1) does not list "legal access" among the explicit transfer-review criteria, the Department is obligated to "examine all the evidence and available information," including long-standing Idaho water law prohibiting the creation, expansion, or alteration of water rights by means of trespass.

It is quite generally held that a water right initiated by trespass is void; that is to say, one who diverts water and puts it to beneficial use by aid of trespass, does not, pursuant to such trespass, acquire a water right. Any claim of right thus initiated is void. *Bassett v. Swenson*, 51 Idaho 256, 5 P.2d 722 (1931), citing to *Marshall v. Niagra Springs Orchard Company, Ltd.*, 22

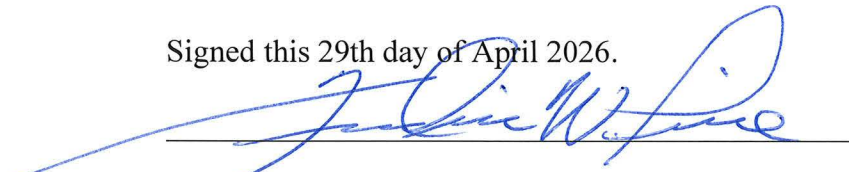
Idaho 144, 125 P. 208; *Tobey v. Brentwood*, 22 Idaho, 566, 127 P. 178; *Prentice v. McKay*, 38 Mont. 114, 98 P. 1081; *Weil on Water Rights* (3d Ed.) § 221, and cases cited. A transfer may not be used to introduce new elements—a new point of diversion, or new place of use—when those elements can be exercised only through trespass on federal land. Doing so would, in effect, authorize an unlawful use and create a legally void component of a water right. The Department should not approve a transfer that results in a use that Idaho law declares void or that requires ongoing violation of federal law (43 C.F.R. § 2808.10(a)).

7. What would resolve your protest?

- A. Withdraw the application; or
- B. Amend the application to exclude federal land from the PPU, POU, and boundary shape; and
 - except terms and conditions that make it clear only private land is intended:
 - 1) “The place of use does not include any federal land.”; and
 - 2) “This right does not grant a right-of-way or easement across the land of another.”

I hereby acknowledge that if I, or my designated representative, fail 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 April 2026.



Fredric W. Price
Protestant's Representative

Attachments:

- ◆Maps prepared by BLM for illustrative purposes.
- ◆Master Title Plat: T09S, R12E

FOR DEPARTMENT USE ONLY

Received by kw Date 4-29-2026
Fee Paid \$25.00 Date 4-29-26 Received by kw Receipt # C126013

CERTIFICATE OF SERVICE

I certify that on April 29, 2026, I served a true and correct copy of the **“Protest of Application for Transfer No. 89563”** with enclosures upon the following individuals by placing the documents in the United States mail in Boise, Idaho, postage paid, and addressed as follows:

Original to:

Mathew Weaver, Director
Idaho Department of Water Resources (IDWR)
Idaho State Office
P.O. Box 83720
322 E Front St
Boise, ID 83702-7371

Copies to:

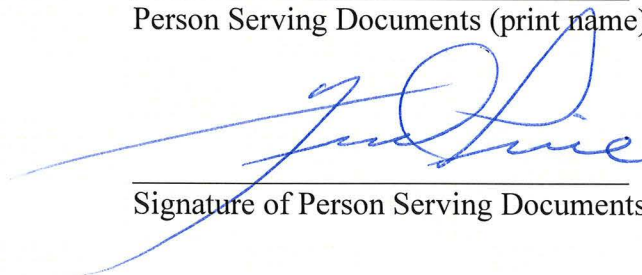
Big Sky Dairy
430 E Yakima Ave
Jerome, ID 83338-4928

AGPROfessionals
213 Canyon Crest Drive, Ste 100
Twin Falls, ID 83301-3053

Joanna P. Tjaden, Field Manager
Daniel Strickler, Supervisory Rangeland Management Specialist
U.S. Department of the Interior
Bureau of Land Management
Jarbidge Field Office
2878 Addison Avenue East
Twin Falls, ID 83301-6812



Person Serving Documents (print name)



Signature of Person Serving Documents

Transfer 89563 (51-02186), Big Sky Dairy

Current Location of Irrigated Acres to be Changed

[illegible]

C. Summary of Proposed Changes.

1. **Water Rights.** Use the following table to list all water rights, or portions thereof, that are proposed to be changed as they would appear after the proposed changes. In the Amount column, list the volume in acre-feet (af) for storage uses or the rate in cubic feet per second (cfs) for all other uses.

All or Part		Right Number	Amount (cfs/af)	Nature of Use	Period of Use	Source
☐	☒	51-2186	0.78cfs/469 AF	Stockwater	01/01 to 12/31	Groundwater
☐	☒	51-2186	1.02cfs/314 AF	Commercial	01/01 to 12/31	Groundwater
☐	☒	51-2186	0.16cfs/5.6 AF	Domestic	01/01 to 12/31	Groundwater

Proposed Place of Use

[illegible]

-perhaps the NE4 of S28 should be in S29?



BLM

[illegible]

Idaho Department of Water Resources Receipt

Receipt ID: C126013

Payment Amount	\$50.00	Date Received	4/29/2026	Region	STATE
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Payment Type	Charge Card
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Payer	PRICE, FREDIC
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Comments	NOTICE OF PROTEST MATTER BEING PROTESTED ON THE BEHALF OF UNITED STATES DEPARTMENT OF THE INTERIOR PROTESTANT'S REPRESENTATIVE FOR SERVICE FREDRIC W. PRICE AGAINST APPLICATION OF TRANSFER 89536, 90330 ORDERID: 77493066 LOCAL REFID: MWqHL2WopE+VG41fMgbJPQ== TOTAL PAID: \$52.25(FEEs: \$2.25) AUTH_CODE: 021026 REC DATE: 4/29/2026 04:43:14 PM MDT
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Fee Details

Amount	Description	PCA	Fund	Fund Detail	Subsidiary	Object
\$50.00	PROTESTS	56103	0229	21		1155



Signature Line (Department Representative)