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Attorneys for Cedar Ridge Dairy LLC

District Court - SRBA Fifth Judicial District In Re: Administrative Appeals County of Twin Falls - State of Idaho	
FEB - 2 2016	
By _____	Clerk
_____	Deputy Clerk

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


RICHARD PARROTT,)	
)	Case No. CV-42-2015-4552
Petitioner,)	
)	AFFIDAVIT OF TRAVIS L.
vs.)	THOMPSON IN SUPPORT OF
)	CEDAR RIDGE DAIRY LLC'S
THE IDAHO DEPARTMENT OF WATER)	REPLY
RESOURCES, GARY SPACKMAN, in his)	
official capacity as Director of the Idaho)	
Department of Water Resources, and,)	
)	
Respondents.)	
_____)	

STATE OF IDAHO)
)ss
 County of Twin Falls)

TRAVIS L. THOMPSON, being first duly sworn on oath, deposes and says:

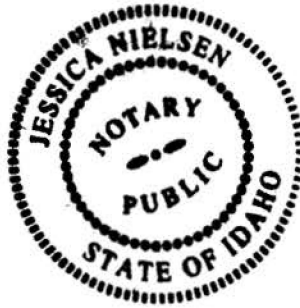
1. I am one of the attorneys representing Cedar Ridge Dairy LLC in this matter. I am over the age of 18 and state the following based upon my own personal knowledge.
2. Attached hereto as **Exhibit A** is a true and correct copy of excerpts of the Director's *Amended Final Order* in transfer no. 79357, issued and served on November 12, 2015.


DATED this 2nd day of February, 2016.



Travis L. Thompson

SUBSCRIBED AND SWORN to before me this 2 day of February, 2016.





Notary Public for State of Idaho
Residing at Rupert, Idaho.
Commission Expires: 4/3/18

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 2nd day of February, 2016, I served true and correct copies of the foregoing upon the following by the method indicated:

SRBA District Court
253 3rd Ave. North
P.O. Box 2707
Twin Falls, Idaho 83303-2707

☐ U.S. Mail, Postage Prepaid
☒ Hand Delivery
☐ Overnight Mail
☐ Facsimile
☐ Email

Garrick Baxter
Meghan Carter
Deputy Attorneys General
Idaho Department of Water Resources
P.O. Box 83720
Boise, Idaho 83720-0098

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivery
☐ Overnight Mail
☐ Facsimile
☒ Email

Richard Parrott
1389 E 4400 N
Buhl, Idaho 83316

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivery
☐ Overnight Mail
☐ Facsimile
☒ Email


Travis L. Thompson

Exhibit A

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR)	AMENDED FINAL ORDER
TRANSFER NO. 79357 IN THE NAME OF)	CONDITIONALLY APPROVING
THOMAS AND DOROTHY LENO)	TRANSFER
<hr/>		

PROCEDURAL BACKGROUND

On May 20, 2014, Thomas Leno ("Leno") filed Application for Transfer No. 79357 with the Idaho Department of Water Resources ("Department"). The Department published notice of the application beginning on July 3, 2014. Protests were filed by Jimmie L. Conder, Michael and Jana Humphries, William D. Hamby, Eric Parrott, Lois M. Rice, Leslie Ellsworth (for herself and 9 other individuals), Pam Ritter, Edward Smith, Victoria Henson, Scott Houtz, Delea Miller (Andrew), Jeanie McCreary, Barbara and Lynn Stephens, Margaret Winsryg and Leroy Elliott, Elizabeth (Betty) Slifer, and Martin F. Hackard.

A pre-hearing conference was conducted on November 19, 2014. The parties were unable to resolve the issues of protest during the conference and requested that a hearing be held to decide the contested case.

On January 20, 2015, Cedar Ridge Dairy, LLC ("Cedar Ridge") filed a motion to intervene in support of the application. The motion to intervene was granted on March 5, 2015, based on the fact that Cedar Ridge was represented by the same attorney as Leno and agreed to rely on the evidence presented by Leno.

On March 18 and 19, 2015, Department hearing officer James Cefalo conducted an administrative hearing in Twin Falls, Idaho. Attorney Travis Thompson represented Leno and Cedar Ridge. Attorney David Coleman represented Margaret Winsryg and Leroy Elliot. The hearing was held in conjunction with hearings for Application for Transfer Nos. 79380, 79384 and 79466.

On June 1, 2015, the hearing officer issued an Amended Preliminary Order Approving Transfer 79357.

On June 15, 2015, Leno and Cedar Ridge filed timely exceptions to the hearing officer's Amended Preliminary Order Approving Transfer 79357.

Conservation of Water Resources

19. During the hearing, the protestants challenged Cedar Ridge's use of a drench system for cooling cows. Although other methods of cooling cows were discussed, no evidence was presented showing that drench systems are not used in other dairies or that drench systems are not consistent with the conservation of water resources in the state of Idaho.

20. Visser's calculation of the maximum annual water demand of the drench system is reasonable. Visser testified that any water not needed for the drench system would be used to satisfy existing peak stockwater demands at Dairy #2. Leno satisfied his burden of proof regarding conservation of water resources. There is no evidence in the record that the proposed water use would be inconsistent with the conservation of water resources in the state of Idaho.

Local Public Interest

21. The local public interest analysis under Section 42-222 is meant to be separate and distinct from the injury analysis. Local public interest is defined as "the interests that the people in the area directly affected by a proposed water use have in the effects of such use on the public water resource." Idaho Code § 42-202B(3).

22. There is no evidence in the record that the changes proposed in Application 79357 are not in the local public interest.

Summary

23. Leno has satisfied his burden of proof for all of the review criteria set forth in Idaho Code § 42-222.

ORDER

IT IS HEREBY ORDERED that Application for Transfer No. 79357 in the name of Thomas and Dorothy Leno is APPROVED, conditioned upon payment of the expert deposition fees incurred by Leno and Cedar Ridge for their deposition of Ed Squires in the amount of \$665.00.

Dated this 12th day of November, 2015.



Gary Spackman
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12th day of November 2015, true and correct copies of the documents described below were served by placing a copy of the same with the United States Postal Service, postage prepaid and properly addressed, to the following:

Documents Served: Amended Final Order Conditionally Approving Transfer (79357) with Transfer approval documents, and Explanatory Information to Accompany a Final Order

Jimmie L. Conder
3623 N 2000 E
Filer ID 83328

Jeanie McCreary
2217 E 3300 N
Twin Falls ID 83301

Michael & Jana Humphries
2382 E 3300 North
Twin Falls ID 83301

Barbara & Lynn Stephens
PO Box 2118
Twin Falls ID 83303-2118

William D. Hamby
2399 E 3300 N
Twin Falls ID 83301

Margaret Winsryg & Leroy Elliott
David Coleman
PO Box 525
Twin Falls ID 83303-0525

Eric Parrott
2152 E 3300 N
Twin Falls ID 83301

Elizabeth Slifer
3779 N 2250 E
Filer ID 83328

Lois M. Rice
PO Box 200
Filer ID 83328-0200

Martin F. Hackard
3289 N 2300 E
Twin Falls ID 83301

Leslie Ellsworth
PO Box 5023
Twin Falls ID 83303-5023

Delea C. Miller
2239 E 3300 N
Twin Falls ID 83301

Pam Ritter
3283 N 2300 E
Twin Falls ID 83301

Victoria B. Henson
3295 N 2300 E
Twin Falls ID 83301-0455

Edward Smith
PO Box 6015
Twin Falls ID 83303-6015

Scott Houtz
2231 E 3300 N
Twin Falls ID 83301

Shadow & Bonnie Seaman
1940 E 3700 N
Filer ID 83328

Richard Parrott
1389 E 4400 N
Buhl ID 83316


Travis L Thompson
Barker Rosholt & Simpson
195 River Vista Place, Ste 204
Twin Falls ID 83301-3027

Courtesy copies:

Thomas Leno
4236 N 1900 E
Buhl ID 83316

Four Sister Dairy LLC
PO Box 105
Twin Falls ID 83303-0105

Greg Sullivan
Brockway Engineering PLLC
2016 N. Washington St., Ste 4
Twin Falls ID 83301


Deborah Gibson
Administrative Assistant

EXPLANATORY INFORMATION TO ACCOMPANY A FINAL ORDER

(Required by Rule of Procedure 740.02)

The accompanying order is a "Final Order" issued by the department pursuant to section 67-5246 or 67-5247, Idaho Code.

Section 67-5246 provides as follows:

- (1) If the presiding officer is the agency head, the presiding officer shall issue a final order.
- (2) If the presiding officer issued a recommended order, the agency head shall issue a final order following review of that recommended order.
- (3) If the presiding officer issued a preliminary order, that order becomes a final order unless it is reviewed as required in section 67-5245, Idaho Code. If the preliminary order is reviewed, the agency head shall issue a final order.
- (4) Unless otherwise provided by statute or rule, any party may file a petition for reconsideration of any order issued by the agency head within fourteen (14) days of the service date of that order. The agency head shall issue a written order disposing of the petition. The petition is deemed denied if the agency head does not dispose of it within twenty-one (21) days after the filing of the petition.
- (5) Unless a different date is stated in a final order, the order is effective fourteen (14) days after its service date 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.
- (6) A party may not be required to comply with a final order unless the party has been served with or has actual knowledge of the order. If the order is mailed to the last known address of a party, the service is deemed to be sufficient.
- (7) A non-party shall not be required to comply with a final order unless the agency has made the order available for public inspection or the nonparty has actual knowledge of the order.
- (8) The provisions of this section do not preclude an agency from taking immediate

action to protect the public interest in accordance with the provisions of section 67-5247, Idaho Code.

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a final order within fourteen (14) days of the service date of this order as shown on the certificate of service. **Note: the petition must be received by the Department within this fourteen (14) day period.** The department will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See section 67-5246(4) Idaho Code.

APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, any party aggrieved by a final order or orders previously issued in a matter before the department may appeal the final order and all previously issued orders in the matter to district court by filing a petition in the district court of the county in which:

- i. A hearing was held,
- ii. The final agency action was taken,
- iii. The party seeking review of the order resides, or
- iv. The real property or personal property that was the subject of the agency action is located.

The appeal must be filed within twenty-eight (28) days: a) of the service date of the final order, b) the service date of an order denying petition for reconsideration, or c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration, whichever is later. See section 67-5273, Idaho Code. The filing of an appeal to district court does not in itself stay the effectiveness or enforcement of the order under appeal.