BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR TRANSFER NO. 71692 (WATER RIGHT NOS. 45-2472, 45-10069, and 45-2399), IN THE NAME OF DAVID L. & SHIRLENE FUNK	)	**PRELIMINARY ORDER AND DEFAULT ORDER**

On May 26, 2005, David L. and Shirlene Funk ("Funks") filed application for transfer no. 71692 with the Idaho Department of Water Resources ("IDWR"), seeking to change the point of diversion, nature of use, and season of use for three groundwater rights. The transfer seeks a change in nature of use from irrigation to commercial and stockwater purposes for a dairy Notice of the transfer was published. Marjorie Bradshaw, Thomas C. Draper, John Kloer, Kenneth Skow, Farnum and Irene Warr, and Kenneth N. Warr protested the application.

On January 24, 2006, IDWR conducted a hearing for the protests. Funks appeared by and through their attorney, Rob Williams. Kenneth Warr, Thomas C. Draper, and Kenneth Scow appeared as protestants representing themselves. Marjorie Bradshaw, John Kloer, and Farnum and Irene Warr did not appear at the hearing.

On May 10, 2006, the hearing officer issued a notice of default order to Marjorie Bradshaw, John Kloer, and Farnum and Irene Warr stating that their protests would be dismissed for failure to attend the hearing. The non-attending protestants did not contest the issuance of a default order.

At the hearing, protestant Kenneth Warr offered 38 exhibits into the record. The applicant objected to the admission of some of these documents. The protestant also withdrew some of the offered exhibits. The applicant stipulated to the admission of the following documents as exhibits:

Protestant Exhibit	Description
A	Probability of Detecting Elevated Concentrations of Nitrate in Ground Water in a Six County Area in South Central Idaho
B	Nitrates in Ground Water a Continuing Issue for Idaho Citizens
C	Ground Water Quality in the Twin Falls Hydrogeoligic Subarea 1991 – 2000
F	Seepage from a Newly Constructed Dairy Lagoon, September 14-16, 1994, Utah State University
L	Analysis of Nitrate (NO3-N) Concentration Trends in 25 Ground Water Quality Management Areas, Idaho 1961 -2001

O	Idaho State Department of Agriculture List of Dairies in Idaho. Waste Inspection – Animal Summary 1 May 2003
P	Idaho State Department of Agriculture Nitrate List from 08/01/1999-08/02/2002
Q	Idaho State Department of Agriculture Nitrate List from 08/01/2002
R	Idaho State Department of Agriculture Nitrate Report 04/25/2002
T	Idaho State Department of Agriculture Resources Division. Monitoring Ground Water Nitrate Concentrations with Sampling Data
U	Nitrogen (N) Isotope Values, Possible Nitrogen Sources.
V	Appendix D – Aquifer Configuration. Appendix E – Sample Maps & Data
W	Map of Cassia County Denoting Dairies & Feedlots in West Cassia County – (West of Burley).
X	Map with Stars Denoting Residences
Z	Idaho State Department of Agriculture MOU Annual Report 20 April 2005
AA	Idaho State Department of Agriculture Letter of July 29, 2005 with Attached Dairy Resource Exportation Summary. Idaho State Department of Agriculture Soil Testing Waste Inspection – Mature Animal Summary. Nitrate Management Summary 2003
AB	Critical Ground Water and Water Management Areas in Idaho January 1992. Cottonwood, Oakley Kenyon, Artesian City and West Oakley Fan
AC	Map Showing Critical Ground Water Areas in West Cassia County
AD	Map Showing Ground Water Flows
AE	Permitted Animal Units in Cassia County
AF	Funk Dairy, Cassia County, CAFO Siting Suitability Determination
AG	Nitrate Overview Statewide. Ambient ground water quality monitoring program, 1990 – 2003
AH	Idaho County Data
AI	Watershed Protection Plan for Scott's Pond Watershed in Jerome Co, Idaho
AJ	Letter from Bob Ohlensehlen to Gerald Martens
AK	Map of area around the proposed David Funk Dairy

At the hearing, the hearing officer did not commit to receiving the documents into evidence. On the contrary, the hearing officer stated that he would review the documents sought for admission to determine the relevance of the information and the foundation for the evidence. The hearing officer stated he would rule on the admissibility of the documents in the preliminary order.

The hearing officer reviewed the evidence stipulated for admission by the applicant, and determines the following exhibits are received into evidence:

Protestant Exhibit	Description	Reason for Admission
B	Nitrates in Ground Water a Continuing Issue for Idaho Citizens	Information about nitrates and harmful concentrations
C	Ground Water Quality in the Twin Falls Hydrogeoligic Subarea 1991 – 2000	Shows area as having various pollutants
F	Seepage from a Newly Constructed Dairy Lagoon, September 14-16, 1994, Utah State University	The author testified at the hearing about this test
O	Idaho State Department of Agriculture List of Dairies in Idaho - Waste inspection – Animal Summary 1 May 2003	Shows David Funk as a dairy producer in the state
P	Idaho State Department of Agriculture Nitrate List from 08/01/199-08/02/2002	Contains nitrate concentration information for David Funk Dairy wells
Q	Idaho State Department of Agriculture Nitrate List from 08/01/2002	Contains nitrate concentration information for David Funk Dairy wells
T	Idaho State Department of Agriculture Resources Division. Monitoring Ground Water Nitrate Concentrations with Sampling Data	Discusses nitrate levels in Cassia and Twin Falls Co.
U	Nitrogen (N) Isotope Values Ratio – Possible Nitrogen Sources	Establishes ground water nitrogen as having come from human or animal waste
W	Map of Cassia County Denoting Dairies & Feedlots in West Cassia County – (West of Burley)	Shows locations of confined Animal Feeding Operations (CAFO's).
X	Map with Stars Denoting Residences	Shows location of residences near proposed David Funk Dairy
Z	Idaho State Department of Agriculture MOU Annual Report 20 April 2005	Discusses challenges of monitoring water quality
AB	Critical Ground Water and Water Management Areas in Idaho January 1992 - Cottonwood, Oakley Kenyon, Artesian City and West Oakley Fan	General information about nearby ground water problems
AC	Map Showing Critical Ground Water Areas in West Cassia County	General information about nearby ground water problems
AE	Permitted Animal Units in Cassia County	Documents Cassia Co. approval of David Funk CAFO
AF	Funk Dairy, Cassia County, CAFO Siting Suitability Determination	State team rates the proposed David Funk Dairy site

AG	Nitrate Overview Statewide. Ambient ground water quality monitoring program, 1990 – 2003	Establishes proposed Funk Dairy located in area of water quality concern

The hearing officer determines that the following documents are not received into evidence, and will not be considered by the hearing officer in this decision:

Protestant Exhibit	Description	Reason not Admitted
A	Probability of Detecting Elevated Concentrations of Nitrate in Ground Water in a Six County Area in South Central Idaho	General document about statewide probabilities – not specific enough and as a result, not relevant
L	Analysis of Nitrate (NO3-N) Concentration Trends in 25 Ground Water Quality Management Areas, Idaho 1961 -2001	Technical information is too broad to help in analyzing the impact of the David Funk Dairy proposal
R	Idaho State Department of Agriculture Nitrate Report 04/25/2002	Does not contain information about the David Funk Dairy
V	Appendix D – Aquifer Configuration. Appendix E – Sample Maps & Data.	General hydrogeologic information not needed
AA	Idaho State Department of Agriculture Letter of July 29, 2005 with Attached Dairy Resource Exportation Summary. Idaho State Department of Agriculture Soil Testing Waste Inspection – Mature Animal Summary. Nitrate Management Summary 2003,	Very large document with no apparent information related to the David Funk Dairy
AD	Map Showing Ground Water Flows	Not relevant
AH	Idaho County Data	Not relevant
AI	Watershed Protection Plan for Scott's Pond Watershed in Jerome Co, Idaho	Specific plan for another area, not the area where David Funk Dairy is proposed
AJ	Letter from Bob Ohlensehlen to Gerald Martens	Insufficient foundation – Does not establish time, place, and relationship to David Funk Dairy
AK	Map of area around the proposed David Funk Dairy	Insufficient foundation – Does not identify or explain significance of markings and concentric circles on the map

In addition, after reviewing the exhibits submitted by the applicant, the hearing officer will not receive three of the applicant's exhibits into evidence that were previously received into evidence. Applicant's Exhibit no. 4 is a re-creation of IDWR's transfer file. The hearing officer will consider the documents in the original file and discard Applicant's Exhibit no. 4.

Applicant's Exhibit no. 8 is purported to be a determination of net water savings resulting from the transfer. The extensive computations are based on an assumption that the acreage being retired was historically growing alfalfa, and assign a consumptive use of 2.82 acre-feet per acre. The 55.8 acres proposed to be retired were determined based on a consumptive rate of 2.47 acre-feet per acre. The difference between 2.82 and 2.47 is 0.35 acre-feet per acre. The product of multiplying 0.35 acre-feet/acre by 55.8 acres is 19.53 acre-feet. The purported savings computed in Applicant's Exhibit no. 8 is 19.6 acre-feet. There is no real savings computed in Applicant's Exhibit no. 8. As a result, the hearing officer will discard and not consider Applicant's Exhibit no. 8.

Applicant's Exhibit no. 10 is not relevant to the factors that must be considered by IDWR.

After considering the evidence, the hearing officer finds, concludes, and orders as follows:

FINDINGS OF FACT

1. Application for Transfer no. 71692 proposes the transfer of portions of two water rights, presently described in the records of the IDWR as follows:

Water Right no.	45-2399
Source:	Ground Water
Priority Date	November 14, 1951
Purpose of Use:	Irrigation
Flow Rate:	1.6 cfs
Point of Diversion:	T11S, R20E Section 1 SESESW[1]
Place of Use:	149 acres located in the SW of Section 1, T11S, R20 E

Irrigation under water right no. 45-2399 is limited to 80 acres.

Water Right no.	45-2472
Source:	Ground Water
Priority Date	March 3, 1954
Purpose of Use:	Irrigation
Flow Rate:	0.8 cfs
Point of Diversion:	T11S, R20E Section 1 SESESW
Place of Use:	149 acres located in the SW of Section 1, T11S, R20 E

Water right no. 45-2472 describes the entire 149 acres without a lesser acreage limitation for the right standing alone.

[1] Public land survey descriptions in this decision without a fraction following a two alpha character descriptor are presumed to be followed by the fraction "1/4." In addition, all public land survey descriptions are presumed to be based on the Boise Meridian. All locations are in Cassia County.

2. Sixteen of the 149 acres described as irrigated acres by water right nos. 45-2399 and 45-2472 are the place of use for water right no. 45-10069. Water right no. 45-10069 authorizes diversion of and irrigation with water diverted from "wastewater" tributary to the Milner Low Lift Main Canal. In addition, the application for transfer states there are also 40 shares of Milner Low Lift Irrigation District water that irrigates a portion of the lands. The application states that the surface water is used on the west side of the farm, and that the east side of the farm is where the dairy will be constructed. This application for transfer does no include water right no. 45-10069 or the Milner Low Lift Irrigation District Water.

3. Application for transfer no. 71692 proposes that portions of the water rights be changed as follows:

Water Right no.	45-2399
Source:	Ground Water
Priority Date	November 14, 1951
Purpose of Use:	Stockwater and Commercial
Flow Rate:	0 6 cfs
Point of Diversion:	T11S, R20E Section 1 SESW (two wells)
Place of Use:	NESW and SESW of Section 1, T11S, R20E

Water Right no.	45-2472
Source:	Ground Water
Priority Date	March 3, 1954
Purpose of Use:	Stockwater and Commercial
Flow Rate:	0.3 cfs
Point of Diversion:	T11S, R20E Section 1 SESW (two wells)
Place of Use:	NESW and SESW of Section 1, T11S, R20E

4. The application for transfer proposes to retire 55 8 acres of the 149 acres irrigated to supply water for the dairy. Water right nos. 45-2399 and 45-2472 are the only water rights identifying the 55.8 acres as a place of use.

5. Funks propose to construct and operate a dairy with 2,286 milking cows and another 1,000 heifers. Cassia County has approved a special use permit for construction and operation of a dairy with 6,200 cows.

6. Applicant's Exhibit no. 3 contains calculations of water use for the proposed dairy. The worksheet follows accepted practices recognized by IDWR for determining water use for dairy cattle. Applicant's Exhibit no. 3 concludes that 138 acre-feet of water must be provided for the proposed use.

7. The applicant attached historical water use information to the application for transfer for the five-year period preceding the filing of the application for transfer. The original application for transfer assumed that only alfalfa had been grown on the acreage proposed to be retired. Correspondence in the file from Jim Stanton, an IDWR employee, to David Funk, dated

March 29, 2005, stated that the historical crops grown included other less consumptive crops, and that 4.7 to 6.5 additional acres would have to be retired to match a historical crop consumption of 138 acre-feet. Jim Stanton determined 2.47 acre-feet per acre was the highest annual consumptive use for the mix of crops grown.

8. Charles G. Brockway (Brockway), expert witness for the applicant, assumed a historical consumptive use of water of 2.47 acre-feet per acre in his calculations. Dividing the 138 acre-feet by 2.47 acre-feet per acre results in a total of 55.8 acres that must be retired from irrigation. The water that was once beneficially used for irrigation will be used for commercial and stockwater purposes.

9. The proposed dairy will be located on land presently irrigated solely with ground water from a well owned by Funk.

10. The amount of water that must be taken from each irrigation water right was determined by proportion. The 55.8 acres that must be retired is 37.45% of 149 acres. As a result, 37.45% of the flow rate authorized by each of the water rights must be transferred to the commercial and stockwater uses of the dairy. Applying the 37.45% to the 1.6 cfs authorized by water right no. 45-2399 results in a transfer flow rate of 0.6 cfs. Applying the 37.45% to the 0.8 cfs authorized by water right no. 45-2472 results in a transfer flow rate of 0.3 cfs. The total transfer flow rate is 0.9 cfs.

11. The flow rate authorized for irrigation by water right no. 45-2399 will be reduced from 1.6 cfs to 1.0 cfs, a reduction of 0.6 cfs. The percentage of reduction is 37.45%. The number of acres that can be irrigated solely by water right no. 45-2399 must also be reduced by 37.45%. When used alone, water right no. 45-2399 currently authorizes irrigation of 80 acres. Thirty acres is 37.45% of 80 acres. The number of acres that can be irrigated solely by water right no. 45-2399 after transfer approval should be limited to 50 acres.

12. The 149-acre place of use described by water right no. 45-2399 should be reduced by 55.8 acres.

13. Because water right no. 45-2472 describes 149 acres as a place of use, and does not describe a smaller place of use if the right is diverted and used independently, the entire place of use will be reduced by 55.8 acres.

14. The existing well is located approximately one-quarter mile away from the two new points of diversion proposed by the transfer.

15. The new points of diversion proposed by the application for transfer and the old point of diversion for irrigation are located within the same modeling cell of the Eastern Snake Plain Ground Water Model. As a result, there is no requirement for analysis of the proposed use using the Eastern Snake Plain Ground Water Model.

16. Brockway compiled information about existing wells near the Funk Dairy and developed data for use in the Theis Equation. Using the data gathered, Brockway determined

characteristics of the aquifer underlying the Funk property. Using the derived characteristics, Brockway determined drawdown impacts of the proposed new wells. The drawdowns at neighboring wells resulting from the Theis equation simulations are depicted in Applicant's Exhibit No. 2.

17. Brockway analyzed drawdowns by assuming the withdrawal of 138 acre-feet of ground water at a constant rate for an entire year. The proposed new points of diversion must be pumped at a rate of 0.19 cfs continuously for 365 days to accumulate 138 acre feet. The Theis simulation predicts that continuous pumping would result in a drawdown of 0.10 foot in the Skow well. The Skow well is located approximately 2,855 feet away from the proposed points of diversion, and is the nearest well to the proposed points of diversion. Drawdowns in other wells would be less than the drawdown in the Skow well.

18. Brockway also analyzed drawdowns by simulating pumping at the maximum rate of 0.9 cfs for 14 days. The simulation predicts that pumping at a maximum rate of 0.9 cfs for 14 days would result in a drawdown of 0.25 feet in the Skow well.

19. It is possible that the maximum rate of 0.9 cfs could be pumped for a period longer than 14 days. The hydrograph of the Skow well could be extrapolated into the future to estimate these drawdowns.

20. The Theis simulations by Brockway assume brand new points of diversion are being pumped. The transfer proposes replacing an existing irrigation well with two new points of diversion located within one-quarter mile of the existing irrigation well. The existing irrigation well has been pumping ground water in the past, and the effects of the irrigation well have already impacted the protestants' wells. Only in the non-irrigation season could the new points of diversion cause additional declines of water levels in the protestants' wells.

21. The hearing officer finds the maximum drawdowns that could be caused by the proposed points of diversion will be less than half a foot. Drawdowns of one-half of a foot or less are not significant.

22. Funks submitted a nutrient management plan to the Idaho Department of Agriculture for approximately 4,200 head of cattle. The nutrient management plan has not yet been approved by the Idaho Department of Agriculture. A nutrient management plan is not approved until final construction is completed and inspected by the Idaho Department of Agriculture.

23. In the nutrient management plan, 32 fields owned by Funks were identified for application of liquid waste from the dairy. Of the 32 fields, 24 were identified as vulnerable to infiltration and contamination. The nutrient management plan addresses these vulnerabilities by defining methods of waste application and nutrient management to minimize risk.

24. A State of Idaho Site Assessment Committee group visited the proposed Funk Dairy site, and determined that the site creates a low risk of contamination and conflict with other laws. This is the lowest rating the site assessment committee can give.

25. Ground water in the area of the proposed dairy has elevated nitrate concentrations. The location of the proposed dairy is within a "Nitrate Priority Area."

26. Based on information presented by the protestant, the hearing officer believes there is a risk that, in the future, nitrate levels in the ground water in the vicinity of the Funk Dairy may exceed the maximum limit of 10 mg/l of water.

CONCLUSIONS OF LAW

1. Idaho Code § 42-222 states, in pertinent part:

> 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 42-202B, Idaho Code, the change will not adversely affect the local economy of the watershed or local area within which the source of water for the proposed use originates, in the case where the place of use is outside of the watershed or local area where the source of water originates, and the new use is a beneficial use, which in the case of a municipal provider shall be satisfied if the water right is necessary to serve reasonably anticipated future needs as provided in this chapter. The director may consider consumptive use, as defined in section 42-202B, Idaho Code, as a factor in determining whether a proposed change would constitute an enlargement in use of the original water right. The director shall not approve a change in the nature of use from agricultural use where such change would significantly affect the agricultural base of the local area.

2. The applicant bears the burden of proof for all of the factors listed in Idaho Code § 42-222.

3. Approval and completion of the proposed transfer will not injure other water rights.

4. Approval and completion of the proposed transfer will not enlarge the use of the rights sought to be transferred provided:

a. The flow rate for the residual irrigation portion of water right no. 45-2399 is limited to 1.0 cfs.

b. The acreage solely irrigated by the residual irrigation portion of water right no. 45-2399 is limited to 50 acres.

c. The total number of acres that can be irrigated by water right no. 45-2399 in combination with other rights is limited to 93.2 acres

d. The flow rate for the residual irrigation portion of water right no. 45-2472 is limited to 0.5 cfs.

e. The total number of acres that can be irrigated by water right no. 45-2472 is limited to 93.2 acres.

5. The applicant received the best rating from the State Dairy Siting Committee and has complied with the nutrient management requirements of the Idaho Department of Agriculture. The applicant has received approval from Cassia County for its confined animal feeding operation.

6. The Idaho Department of Water Resources should not approve a water right that will violate water quality standards. Nonetheless, IDWR should defer to the agencies that have primary jurisdiction over water quality matters. This jurisdiction is vested in the Idaho Department of Environmental Quality, and has been delegated, in part, to the Idaho Department of Agriculture. Despite concerns about water quality raised by the protestants and shared by the hearing officer, the applicant has satisfied the local public interest related to water quality as set forth in the prior conclusion of law and in the findings of fact.

7. The changes proposed by application for transfer no. 71692 are in the local public interest.

8. The applicant will employ methods of water use that will conserve the water used in the dairy operation.

9. This application for transfer should be approved.

ORDER

IT IS HEREBY ORDERED that application for transfer no. 71692 is **Approved** subject to the following conditions:

WATER RIGHT NO. 45-13891 (remainder of 45-2399):

1. This right is limited to the irrigation of 50.0 acres within the place of use described above in a single irrigation season.

2. Rights 45-13891 and 45-13893 when combined shall not exceed a total annual maximum diversion volume of 372.8 af at the field headgate, and the irrigation of 93.2 acres.

3. Use of this right with the rights listed below is limited to the irrigation of a combined total of 93.2 acres in a single irrigation season. Combined Right Nos.: 45-10069 & 45-13893.

4. Right includes accomplished change in place of use pursuant to Section 42-1425, Idaho Code.

5. Pursuant to Section 42-1412(6), Idaho Code, this water right is subject to such general provisions necessary for the definition of the rights or for the efficient administration of water rights as may be determined by the Snake River Basin Adjudication court at a point in time no later than the entry of the final unified decree.

WATER RIGHT NO. 45-13892 (transferred part of 45-2399):

1. Rights 45-13892 and 45-13894 when combined shall not exceed a total annual maximum diversion volume of 138.0 af.

2. Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code and applicable Well Construction Rules of the Department.

3. Prior to the diversion and use of water under Transfer approval 71692, the right holder shall install and maintain acceptable measuring devices, including data loggers, at the authorized points of diversion, in accordance with Department specifications.

4. The right holder shall record the quantity of water diverted and annually report diversions of water and/or other pertinent hydrologic and system information as required by Section 42-701, Idaho Code.

5. Prior to the diversion and use of water under this approval, the right holder shall comply with applicable county zoning and use ordinances.

6. Prior to the diversion and use of water under this approval, the right holder shall comply with applicable water quality standards of the Department of Environmental Quality.

7. Commercial use is for a dairy.

8. Pursuant to Section 42-1412(6), Idaho Code, this water right is subject to such general provisions necessary for the definition of the rights or for the efficient administration of water rights as may be determined by the Snake River Basin Adjudication court at a point in time no later than the entry of the final unified decree.

9. The right holder shall accomplish the change authorized by this transfer within one year of the date of this approval.

10. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.

WATER RIGHT NO. 45-13893 (remainder of 45-2472):

1. Rights 45-13891 and 45-13893 when combined shall not exceed a total annual maximum diversion volume of 372.8 af at the field headgate, and the irrigation of 93.2 acres.

2. Use of this right with the rights listed below is limited to the irrigation of a combined total of 93.2 acres in a single irrigation season. Combined Right Nos : 45-10069 & 45-13891.

3. Pursuant to Section 42-1412(6), Idaho Code, this water right is subject to such general provisions necessary for the definition of the rights or for the efficient administration of water rights as may be determined by the Snake River Basin Adjudication court at a point in time no later than the entry of the final unified decree.

WATER RIGHT NO. 45-13894 (transferred part of 45-2472):

1. Rights 45-13892 and 45-13894 when combined shall not exceed a total annual maximum diversion volume of 138.0 af.

2. Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code and applicable Well Construction Rules of the Department.

3. Prior to the diversion and use of water under Transfer approval 71692, the right holder shall install and maintain acceptable measuring devices, including data loggers, at the authorized points of diversion, in accordance with Department specifications.

4. The right holder shall record the quantity of water diverted and annually report diversions of water and/or other pertinent hydrologic and system information as required by Section 42-701, Idaho Code.

5. Prior to the diversion and use of water under this approval, the right holder shall comply with applicable county zoning and use ordinances.

6. Prior to the diversion and use of water under this approval, the right holder shall comply with applicable water quality standards of the Department of Environmental Quality.

7. Commercial use is for a dairy.

8. Pursuant to Section 42-1412(6), Idaho Code, this water right is subject to such general provisions necessary for the definition of the rights or for the efficient administration of water rights as may be determined by the Snake River Basin Adjudication court at a point in time no later than the entry of the final unified decree.

9. The right holder shall accomplish the change authorized by this transfer within one year of the date of this approval.

10. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.

WATER RIGHT NO. 45-10069 (associated right):

1. Use of this right with the rights listed below is limited to the irrigation of a combined total of 93.2 acres in a single irrigation season. Combined Right Nos.: 45-10069, 45-13891, 45-13893.

2. This right remains subject to the right of the original appropriator, in good faith and in compliance with state laws governing changes in use and/or expansion of water rights, to cease wasting water, to change the place or manner of wasting it, or to recapture it

3. Pursuant to Section 42-1412(6), Idaho Code, this water right is subject to such general provisions necessary for the definition of the rights or for the efficient administration of water rights as may be determined by the Snake River Basin Adjudication court at a point in time no later than the entry of the final unified decree.

Based upon failure to appear at the time and place set for hearing, IT IS FURTHER ORDERED that Marjorie Bradshaw, John Kloer, and Farnum and Irene Warr are dismissed as parties to the contested case.

Dated this 22nd day of May, 2006.

Gary Spackman
Hearing Officer