

SUPPORT DATA
TRANSFER # 75738
IN FILE # ~~47-8121~~

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

SUPPORT DATA
TRANSFER # 75739
IN FILE # ~~47-8121~~
47-12499

IN THE MATTER OF APPLICATION FOR
TRANSFER NOS. 75738 AND 75739 IN
THE NAME OF MATTHEW M.
MACHADO AND JACQUELINE C.
MACHADO

**PRELIMINARY ORDER
APPROVING TRANSFER
APPLICATIONS**

FACTUAL SUMMARY AND PROCEDURAL HISTORY

On June 22, 2009, Matthew M. Machado and Jacqueline C. Machado filed Application for Transfer No. 75738. On June 30, 2009, Matthew M. Machado and Jacqueline C. Machado filed Application for Transfer No. 75739. Transfer Nos. 75738 and 75739 are sometimes jointly referred to as “the transfers” or “both transfers” in this order. When referred to separately, the transfer will be identified by number. “Machados” and “Applicants” are used in this order to refer collectively to Matthew M. Machado and Jacqueline C. Machado.

Machados own stock and dairy facilities near Buhl, Idaho. Transfer 75738 proposes to change 6.6 acres of irrigation use under three water rights to provide an additional 0.12 cfs and 20.0 acre-feet per annum (afa) of ground water from two existing wells on the dairy property. Transfer 75739 proposes to change 1.6 acres of irrigation use under three water rights to provide an additional 0.03 cfs and 4.8 afa of ground water from an existing well at the feedlot property. Both transfers move the water rights from Township 11 S, Range 18 E, Sections 31 and 32, B.M., to locations within Township 11S, Range 14 E, Section 8 and 9, B.M., a distance of approximately 23 miles. Both transfers also propose changes to the water rights already existing at the Machados’ dairy and feedlot facilities.

The Department published notice of the transfers in the *Times News* on February 17 and 24, 2011. The published protest deadline was March 7, 2011.

DuWayne Kimball protested both transfers. In this order “Kimball” and “Protestant” refer to DuWayne Kimball. Kimball owns land in Section 2, Township 11South, Range 14 East, B.M. Water Right No. 47-10987 authorizes diversion of ground water for domestic and stock water use from a well on Kimball’s property. Kimball alleges that the changes proposed in the Machados’ transfers may injure him by negatively affecting the supply of water to his well. Kimball also alleges that expansion of dairies or confined animal feeding operations (“CAFOs”) is not consistent with the local public interest.

Because Transfers 75738 and 75739 involve the same parties and the same issues, the Department of Water Resources (“Department” or “IDWR”) consolidated the proceedings in these contested matters pursuant to Rule 556 of the Department’s Rules of Procedure (IDAPA 37.01.01.556).

On May 17, 2011, the Department held a pre-hearing conference that did not resolve Kimball's protests. On July 20, 2011, the Department conducted a hearing to obtain testimony and evidence regarding the proposed transfers. At the hearing, Gary D. Slette of Robertson & Slette PLLC represented Machados. Kimball represented himself with assistance from his son, DuWayne Kimball, Jr. The following witnesses testified at the hearing:

- Matthew M. Machado
- Greg Sullivan of Brockway Engineering PLLC
- Robert M. Ohlensehlen of Nutrient Management Solutions
- DuWayne Kimball
- DuWayne Kimball Jr.
- Charles E. Brockway of Brockway Engineering PLLC

At the hearing, the hearing officer admitted the following items into evidence:

- Exhibit 1 – *Multiple Well Effect Analysis of Transfers 75738 and 75739*, a report prepared for Matthew Machado by Brockway Engineering PLLC
- Exhibit 3 – *Public Good Resulting from Water Use on a 1,000 Cow Dairy*, paper by Robert M. Ohlensehlen
- Exhibit 4 – June 22, 2011, letter from Rabo AgriFinance to Gary D. Slette
- Exhibit 6 – Department water right report for water right no. 47-10987
- Exhibit A – Notice of Protest of Transfer 75738
- Exhibit B – Well Driller Report for Well Tag No. D0044631 for Duffy
- Exhibit C – Well Driller Report for Well Tag No. D0008041 for Duelke
- Exhibit D – Well Driller Report for Well Tag No. D0044546 for Murphy
- Exhibit E – Undated statement signed by Nancy Murphy
- Exhibit F – August 28, 2009, letter signed by Bruce Duffy
- Exhibit G – May 12, 1999, Application for Abandonment of a Well from Duelke
- Exhibit H – Hydrograph titled Well 10S14E-07DDA1
- Exhibit I – Twin Falls Ground Water Management Area Ground Water Hydrographs dated January 1, 2007
- Exhibit J – *Geohydrology and Development of a Steady State Ground-Water Model for the Twin Falls, Idaho Area*, a technical report dated December, 1997
- Exhibit K – *Development of a Transient Ground-Water Model for the Twin Falls Area, Idaho* dated June 1998
- Exhibit L – Idaho Food Quality Assurance Laboratory soil report dated September 7, 2007
- Exhibit M – Well test report dated May 24, 2011 for producer Matt Machado
- Exhibit N – Dairy Farm Waste Facility Inspection Reports for dairy owner M & J Machado dated from December 18, 2006 to May 6, 2011
- Exhibit O – Twin Falls Comprehensive Plan Update Open House Comment Summary in part, Elements 3, 7, 8, 12 and Comments
- Exhibit P – Twin Falls Comprehensive Plan excerpts dated April 28, 2008
- Exhibit R – Ground Water Nitrate Monitoring Near Buhl, Idaho, Technical Results Summary #20 from Idaho Department of Agriculture dated April 2004.

The hearing officer also reserved the right to take official notice of any water right records maintained by the Department for water rights that may be affected by the proposed water use, well driller reports in the Department's files, and observation well records in the Department's files.

FINDINGS OF FACT

1. On June 22, 2009, the Machados filed Transfer 75738 proposing to change the nature of use of portions of Snake River Basin Adjudication Claims 47-17453, 47-17457 and 47-17459, which were offered for sale to Machados by Mathers Ranch Inc. ("Mathers"). On June 30, 2009, the Machados filed Transfer 75739 proposing to change the nature of use of different portions of Snake River Basin Adjudication Claims 47-17453, 47-17457 and 47-17459, also offered for sale by Mathers. On July 17, 2008, the Department approved Transfer 73728 splitting Claims 47-17453, 47-17457 and 47-17459. Mathers retained ownership of Rights 47-17476 (a portion of Right 47-17459), 47-17478 (a portion of Right 47-17453), and 47-17480 (a portion of Right 47-17457).
2. On July 14, 2009, the Snake River Basin Adjudication court decreed Rights 47-17476, 47-17478, and 47-17480.
3. On March 18, 2010, the Department approved Transfer 75529 splitting Rights 47-17476, 47-17478, and 47-17480. Mathers retained ownership of Rights 47-17510 (a portion of Right 47-17476), 47-17512 (a portion of Right 47-17478), and 47-17514 (a portion of Right 47-17480). Consequently, Transfers 75738 and 75739 each propose to change the nature of use of portions of water rights currently numbered 47-17510, 47-17512, and 47-17514.
4. Matthew M. Machado and Jacqueline C. Machado own Water Right 47-8121, which has the following elements:

| | |
|--------------------------------|---|
| Priority Date: | September 21, 1988 |
| Source: | Ground Water |
| Point of Diversion: | NW¼SW¼, Sec.9, Township 11 South, Range 14 East, B.M. |
| Water Use and Quantity: | Stockwater (600 cattle) 0.09 cfs and 20.9 af Domestic (1 home) 0.04 cfs and 1.2 af Commercial (a dairy) 0.09 cfs and 1.2 af |
| Season of Use: | 01/01 to 12/31 |
| Total Quantity: | 0.09 cfs and 23.3 af |
| Place of Use: | NW¼SW¼, Sec. 9, Township 11 South, Range 14 East, B.M. |

5. Right 47-8121 was licensed in 1995 and has been in continuous use since then.
6. Mathers owns decreed Water Rights 47-17510, 47-17512 and 47-17514, which all authorize the diversion of ground water within the SW¼NW¼ and SW¼SW¼ of Section 32 and the SW¼NE¼ of Section 31, Township 11 South, Range 18 East, B.M., Twin Falls County, for irrigation of land within Sections 31 and 32, Township 11 South, Range 18 East. Rights 47-17510, 47-17512 and 47-17514 are limited to a total combined diversion rate of 3.97 cfs, a total combined annual diversion volume of 868.4 af, and irrigation of a combined total of 217.1 acres

in a single irrigation season. The other elements of Rights 47-17510, 47-17512 and 47-17514 are:

Right : 47-17510
Priority Date: August 8, 1954
Water Use and Quantity: Irrigation 1.80 cfs and 790 af
Acre Limit: 197.5 acres
Season of Use: 03/15 to 11/15

Right : 47-17512
Priority Date: November 6, 1961
Water Use and Quantity: Irrigation 3.97cfs and 865.6 af
Acre Limit: 216.4 acres
Season of Use: 03/15 to 11/15

Right : 47-17514
Priority Date: April 3, 1961
Water Use and Quantity: Irrigation 0.27 cfs and 131.7 af
Acre Limit: 99.8 acres
Season of Use: 03/15 to 11/15

7. Transfer 75738 proposes to change the following portions of Rights 47-17510, 47-17512 and 47-17514 from irrigation use to stockwater and commercial uses to provide an additional 0.12 cfs and 20.0 af of water for the existing dairy currently served by Water Right 47-8121:

| | | | |
|----------|---------|---------|----------------------------------|
| 47-17510 | .06 cfs | 24.0 af | 6.0 acres within a 6.6-acre area |
| 47-17512 | .12 cfs | 26.4 af | 6.6 acres within a 6.6-acre area |
| 47-17514 | .01 cfs | 4.0 af | 3.0 acres within a 6.6-acre area |

8. Irrigation is not a fully consumptive water use. The volumes of water authorized for diversion under Rights 47-17510, 47-17512 and 47-17514, amounting to 4.5 af of water per acre of irrigated land, represent both the consumptive and non-consumptive portions of the authorized irrigation uses. The new uses proposed in Transfer 75738, commercial and stock watering, are considered fully consumptive. To prevent enlargement of the rights proposed to be transferred, Machados propose to transfer only the consumptive portion, or 3.02 af of water per acre of irrigated land, of the irrigation rights. The remainder of the authorized diversion volume for the portions of Rights 47-17510, 47-17512 and 47-17514 to be transferred would be permanently lost.
9. Transfer 75738 proposes to move the points of diversion and place of use for portions of Rights 47-17510, 47-17512 and 47-17514 approximately 23 miles west of their current locations south of Kimberly to the vicinity of Castleford.
10. Transfer 75738 also proposes to add a point of diversion to Right 47-8121. If approved, the four rights involved in Transfer 75738 would be diverted from two existing wells in the

NW¼SW¼ , Section 9, Township 11 South, Range 14 East, B.M., to serve a place of use in the NW¼SW¼, Section 9, Township 11 South, Range 14 East, B.M.

11. On October 5, 2008, Machados entered into an agreement to purchase 6.6 acres of Rights 47-17510, 47-17512 and 47-17514 from Mathers if the Department approves a transfer authorizing Machados to change the rights. The agreement contains the following statement:

If final approval of the transfer by the Idaho department of water Resources has not been provided by the

1st Day of July 2010 all protest and appeals resolved or barred by lapse of time

This Agreement shall be null and void. [sic]

The construction of the statement renders its meaning unclear, but it may mean that the purchase agreement between Machados and Mathers is “null and void” because July 1, 2010, has passed without approval of Transfer 75738. The record has not been supplemented with a water right purchase agreement between Machados and Mathers for the period after July 1, 2010.

12. Twin Falls County regulates confined animal feeding operations (“CAFOs”) within its borders. Twin Falls County authorized the Machados to operate a dairy with up to 1,032 animal units, or approximately 635 milking and dry dairy animals and 200 replacement heifers, in Section 9, Township 11 East, Range 14 East, B.M., which is the place of use proposed in Transfer 75738.¹
13. The changes proposed in Transfer 75738 would provide Machados sufficient water to expand their dairy operation to the number of animals authorized in their CAFO permit.
14. Matthew M. Machado and Jacqueline C. Machado own Water Right No. 47-12499, which was decreed in the Snake River Basin Adjudication on May 14, 1999. Right 47-12499 has the following elements:

| | |
|-----------------------------|---|
| Priority Date: | November 1, 1960 |
| Source: | Ground Water |
| Point of Diversion: | SW¼SE¼SE¼, Sec. 8, Township 11 South, Range 14 East, B.M. |
| Water Use, Quantity: | Stockwater 0.07 cfs Domestic (2 houses) 0.06 cfs |
| Season of Use: | 01/01 to 12/31 |
| Total Quantity: | 0.07 cfs up to 13,000 gallons per day |
| Place of Use: | SE¼SE¼, Section 8, Township 11 South, Range 14 East, B.M. |

¹ According to the letter from Twin Falls County Planning and Zoning Administrationsubmitted with the transfer applications, a mature dairy cow equals 1.4 animal units and a dairy heifer equals 1.0 animal unit, regardless of the size of the animal. On that basis, 635 cows would equal 889 animal units and 200 heifers would equal 200 animal units, for a total of 1,089 animal units. Thus, either the number of animals or theauthorized animal unit limit may have been misreported.

15. Transfer 75739 proposes to change the following portions of Rights 47-17510, 47-17512 and 47-17514 from irrigation use to stockwater and commercial uses to provide an additional 0.03 cfs and 4.8 af of water for the existing feedlot currently served by Water Right 47-12499:

| | | | |
|----------|---------|--------|----------------------------------|
| 47-17510 | .01 cfs | 5.8 af | 1.5 acres within a 1.6-acre area |
| 47-17512 | .03 cfs | 6.4 af | 1.6 acres within a 1.6-acre area |
| 47-17514 | .01 cfs | 1.0 af | 0.7 acres within a 1.6-acre area |
16. Transfer 75739 proposes to move the points of diversion for portions of Rights 47-17510, 47-17512 and 47-17514 approximately 23 miles west of their current locations south of Kimberly to the vicinity of Castleford.
17. Transfer 75739 also proposes to change the place of use of Right 47-12499. If approved, the four rights involved in Transfer 75739 would be diverted from a well in the SE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 8, Township 11 South, Range 14 East, B.M., to serve a place of use in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ and the SE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 8, Township 11 South, Range 14 East, B.M.
18. On October 5, 2008, Machados entered into an agreement to purchase 1.6 acres of Rights 47-17510, 47-17512 and 47-17514 from Mathers if the Department approves a transfer authorizing Machados to change the rights. The agreement contains the same statement as the agreement described in Finding of Fact 11.
19. Twin Falls County authorized the Machados to operate a livestock feeding operation with up to 560 animal units in Section 8, Township 11 East, Range 14 East, B.M.
20. The changes proposed in Transfer 75739 would provide Machados sufficient water to expand their livestock feeding operation to the number of animals authorized in their CAFO permit.
21. DuWayne Kimball and Kathy L. Kimball own Water Right No. 47-10987, which was decreed in the Snake River Basin Adjudication on May 14, 1999. Right 47-10987 has the following elements:

| | |
|--------------------------------|--|
| Priority Date: | October 1, 1945 |
| Source: | Ground Water |
| Point of Diversion: | SW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 2, Township 11S, Range 14E, B.M. |
| Water Use and Quantity: | Domestic 0.06 cfs Stockwater 0.04 cfs |
| Season of Use: | 01/01 to 12/31 |
| Total Quantity: | 0.06 cfs up to 13,000 gallons per day |
| Place of Use: | SE $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 2, Township 11 South, Range 14 East, B.M. |
22. The point of diversion for Right 47-10987 is located approximately 2.4 miles from the points of diversion proposed in Transfer 75738 and approximately 2.8 miles from the point of diversion proposed in Transfer 75739.
23. The area extending from the Snake River on the north to the foothills of the Cassia Mountains on the south, and from Murtaugh Lake on the east to Salmon Falls Creek on the

west, is a basalt plain overlain by Quaternary sediments (*Exhibit J, page 8*). The regional aquifer ("regional aquifer") in this area is primarily within the basalt strata (*Exhibit J, page 13*). Surface irrigation is the primary source of recharge to this regional aquifer, and ground water levels fluctuate with the irrigation cycle (*Exhibit J, page 13*). The annual fluctuation in ground water levels may be as much as 14 feet near the Machado and Kimball properties (*Exhibit H*).

24. Increasing usage of sprinkler irrigation, land use changes, and increasing pumping of ground water could reduce the supply of water available in the regional aquifer (*Exhibit J, page 3, and Exhibit K, page 2*).
25. The regional aquifer is underlain by a confined geothermal aquifer (*Exhibit J, page 13*). The regional aquifer and the geothermal aquifer are believed to have limited natural communication with each other (*Exhibit J, page 13*). The geothermal aquifer is the subject of the Twin Falls Ground Water Management Area ("TFGWMA") established by the Department pursuant to Idaho Code § 42-233b. The Department established the TFGWMA because artesian pressures in the geothermal aquifer are declining. Exhibit I depicts four hydrographs showing declines in the geothermal aquifer, not the regional aquifer.
26. The existing and proposed points of diversion (wells) for the water rights involved in the two transfers tap into this regional aquifer system, as does the well serving as a point of diversion for Right 47-10987.
27. Kimball submitted well driller reports for three domestic wells drilled from two to three miles east of Machados' dairy since 1999 (*Exhibits B, C, and D*), along with statements indicating the wells replaced older wells that had gone dry (*Exhibits E, F, and G*). Kimball did not provide detailed characterizations of the wells that were replaced. There are many reasons wells stop yielding water. The three well failures in a general area over eight years may or may not have occurred for the same reason.
28. Kimballs did not provide evidence estimating the impact of increased pumping from Machados' wells on Kimball's well.
29. Brockway Engineering PLLC ("Brockway"), a consulting firm of licensed engineers hired by the Machados, evaluated well driller reports to characterize the regional aquifer in the vicinity of the wells owned and used by Machado and Kimball. Using assumptions from its evaluation, Brockway used the Theis equation to estimate the likely impact on the water level at various distances if the transfer applications were approved (*Exhibit I*). The likely decrease in water level at a radius of 1000 feet from Machados' proposed points of diversion would likely be in the range of 0.33 feet (4 inches) to 0.79 feet (9.5 inches). The likely increase in drawdown at Kimball's well caused by pumping the amounts of water proposed in the transfer applications would fall somewhere within a range of 0.08 feet (1 inch) to 0.12 feet (1.5 inches).
30. Since 2006 the Idaho Department of Agriculture reported that Machados violated the Idaho Rules Governing Dairy Waste (IDAPA 02.04.14) on a handful of occasions (*Exhibits L, M, and N*). Idaho Department of Agriculture inspection reports from 2011 indicate Machados are in compliance with the Idaho Rules Governing Dairy Waste (*Exhibit N*).

CONCLUSIONS OF LAW

Governing Statutes and Rules

1. Idaho Code § 42-202B(3) states:

"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.

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

Any person, entitled to the use of water whether represented by license issued by the department of water resources, by claims to water rights by reason of diversion and application to a beneficial use as filed under the provisions of this chapter, or by decree of the court, who shall desire to change the point of diversion, place of use, period of use or nature of use of all or part of the water, under the right shall first make application to the department of water resources for approval of such change. Such application shall be upon forms furnished by the department and shall describe the right licensed, claimed or decreed which is to be changed and the changes which are proposed, and shall be accompanied by the statutory filing fee as in this chapter provided. Upon receipt of such application it shall be the duty of the director of the department of water resources to examine same, obtain any consent required in section 42-108, Idaho Code, and if otherwise proper to provide notice of the proposed change in a similar manner as applications under section 42-203A, Idaho Code. Such notice shall advise that anyone who desires to protest the proposed change shall file notice of protests with the department within ten (10) days of the last date of publication. Upon the receipt of any protest, accompanied by the statutory filing fee as provided in section 42-221, Idaho Code, it shall be the duty of the director of the department of water resources to investigate the same and to conduct a hearing thereon

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. The transfer of the right to the use of stored water for irrigation purposes shall not constitute an enlargement in use of the original right even though more acres may be irrigated, if no other water rights are injured thereby. A copy of the approved application for change shall be returned to the applicant and he shall be authorized upon receipt thereof to make the change and the original water right shall be presumed to have been amended by reason of such authorized change. In the event the director of the department of water resources determines that a proposed change shall not be approved as provided in this section, he shall deny the same and forward notice of such action to the applicant by certified mail, which decision shall be subject to judicial review as hereafter set forth. Provided however, minimum stream flow water rights may not be established under the local public interest criterion, and may only be established pursuant to chapter 15, title 42, Idaho Code.

3. The applicant bears the ultimate burden of proof regarding all the factors set forth in Idaho Code § 42-222(1).
4. Idaho Code § 42-226 states in pertinent part:

The traditional policy of the state of Idaho, requiring the water resources of this state to be devoted to beneficial use in reasonable amounts through appropriation, is affirmed with respect to the ground water resources of this state as said term is hereinafter defined and, while the doctrine of "first in time is first in right" is recognized, a reasonable exercise of this right shall not block full economic development of underground water resources. Prior appropriators of underground water shall be protected in the maintenance of reasonable ground water pumping levels as may be established by the director of the department of water resources as herein provided.

5. Idaho Code § 42-229 applies Idaho Code § 42-226 retroactively to non-excepted ground water rights: "the administration of all rights to the use of ground water, whenever or however acquired or to be acquired, shall, unless specifically excepted herefrom, be governed by the provisions of this act."
6. Prior to 1978, domestic wells, pursuant to Idaho Code § 42-227, were specifically excepted from the requirements contained in Idaho Code § 42-226. In 1978, the legislature specifically amended Idaho Code § 42-227 to extend the requirements in Idaho Code § 42-226 to domestic wells. The 1978 amendment was not retroactive in its application.

Authority to Transfer Rights 47-17510, 47-17512 and 47-17514

7. It is unclear whether Machados' agreements to purchase portions of Rights 47-17510, 47-17512 and 47-17514 are still in force, are not in force, or have been updated. The ambiguity does not, however, impact the Department's decision to approve the transfers. Nevertheless, because of the ambiguity, the Department will take reasonable measures to guard against the possibility that the agreements are not in force or have not been updated. First, the portions

of Rights 47-17510, 47-17512 and 47-17514 involved in the transfers should be left in Mathers' name in the transfer approvals. Second, Machados should be required to submit to the Department an ownership change notice, complete with a water deed or other ownership conveyance documentation, prior to diverting water pursuant to portions of Rights 47-17510, 47-17512 and 47-17514 at the points of diversion authorized in the transfers. The Department typically requires transfers to be accomplished within one year of approval. If the Machados do not submit the ownership change notice within a year of approval, the transfers will not have been accomplished, and they may be rescinded.

Satisfaction of Idaho Code § 42-222(1) Review Criteria

A. Potential to Reduce the Quantity of Water under Existing Rights (Injury)

8. The determination of what constitutes a reasonable pumping level is highly fact specific and must be based on the facts, circumstances, and hydrogeologic setting of each particular case.
9. Since the 1978 amendment to Idaho Code § 42-227, diversions of ground water for domestic purposes established in 1978 or later are subject to the reasonable pumping level provisions of Idaho Code § 42-226. With a likely decrease in water levels of less than one foot at a radius of 1000 feet from the proposed points of diversion and a likely decrease of less than two inches at the Kimball's point of diversion, approval of the transfer applications is not likely to cause local ground water levels to decline beyond a reasonable pumping level.
10. Consistent with Idaho Code §§ 42-226, -227, and -229, the Idaho Supreme Court has held that "domestic wells drilled prior to 1978 are exempt from the provisions Idaho Code § 42-226." *Parker v. Wallentine*, 103 Idaho 506, 650 P.2d 648 (1982). For domestic wells drilled prior to 1978, "That right includes the right to have the water available at the historic pumping level or to be compensated for expenses incurred if a subsequent appropriator is allowed to lower the water table and Parker is required to change his method or means of diversion in order to maintain his right to use the water." *Id.*, at 512, 650 P.2d at 654. Domestic wells with 1978 priorities or later are protected in the maintenance of their reasonable pumping levels. *Id.*
11. The extent to which Idaho Code §§ 42-226, -227, -229 and *Parker* provide protection to Kimball's water right depends on the priority dates of the water uses from the affected well. Because his well was drilled prior to 1978, Kimball is protected against junior appropriators in the maintenance of his historic pumping levels. The Mathers rights involved in Transfers 75738 and 75739 are junior to Kimball's right. However, the predicted change in pumping level of 1.5 inches or less is so miniscule, especially when viewed against the background of fluctuations in ground water levels due to recharge from surface irrigation, it will be virtually undetectable and amounts to no injury.

B. Enlargement

12. Rights 47-17510, 47-17512, 47-17514, 47-8121, and 47-12499 are valid water rights. No portion of Rights 47-17510, 47-17512, 47-17514, 47-8121, or 47-12499 has been forfeited for five or more years of non-use.

13. Allowing only the consumptive portions of Rights 47-17510, 47-17512, and 47-17514 to be transferred and eliminating the non-consumption portions, as Machados propose in both transfers, will prevent enlargement of the consumptive use of water when the rights are changed from irrigation to stockwater and commercial purposes.

C. Conservation of Water Resources within the State of Idaho

14. The transfer applications do not propose unnecessarily consumptive or wasteful water uses and are, therefore, consistent with the conservation of water resources in Idaho.

D. Local Public Interest

15. At the hearing, Machado presented lengthy testimony regarding the broad public interest, particularly the economic interest, in CAFO facilities in Twin Falls County. For evaluating water right applications, however, the local public interest is defined narrowly in Idaho Code 42-202B(3) as “the effects of such use *on the public water resource* [emphasis added].” Consequently, in connection with the two transfer applications the Department cannot evaluate whether economic conditions make it appropriate to expand CAFO facilities in Twin Falls County. The Department can evaluate only whether the proposed change in water use would negatively impact the public water resource. In other words, to be relevant to the public interest review criteria, testimony and exhibits have to address whether CAFO expansion does or does not endanger the public water resource or does or does not prevent the public water resource from being used for a higher alternative use.
16. Most of the material presented did not link public interest considerations to effects on the public water resource. Thus, much of the hearing testimony and exhibits are irrelevant. However, testimony regarding the local public interest touched on the effects of the proposed change on the public water resource in two ways. First, Kimball presented an Idaho Department of Agriculture Dairy Farm Waste Facility Inspection Report indicating that in 2006 one of Machados’ wastewater lagoons was not properly maintained. Accidental release of wastewater from the lagoon could have polluted the public ground water. By submitting such evidence, Kimball implies that Machado is not a good steward of his wastewater, and expansion of his facilities could further endanger the public ground water resource. The Dairy Farm Waste Facility Inspection Report from May 6, 2011, however, shows Machados rectified the problem identified in the 2006 inspection report and they are in compliance with wastewater management requirements. Second, Kimball postulated that land use change from irrigated crop production to other uses, such as CAFOs, would gradually deprive the regional aquifer of its primary source of recharge and eventually deplete it. Such an eventuality is theoretically possible, but the well-failure information submitted to depict a declining regional aquifer is inconclusive. Wells fail for many reasons.
17. Kimball postulated that the Department should, as a component of the public interest review, evaluate the cumulative impact of water right actions on the sustainability of the regional aquifer. When reviewing an application for a new water right, the Department is directed in Idaho Code § 42-203A(5) to evaluate the sufficiency of the water supply to satisfy the proposed use without injuring other water users. There is no such directive for transfer applications

because Idaho Code § 42-222(1) directs the Department to ensure transfers do no result in enlargement of use. With no enlargement, depletion of the aquifer cannot be increased. As described above, Machados' proposed transfers are crafted to prevent enlargement by transferring only the consumptive use portions of the Mathers rights. Because there will be no enlargement, the proposed transfers will not further deplete the regional aquifer.

18. Approval of the applications does not conflict with the local public interest.

E. Potential to Impact the Local Economy if Water is Transferred outside the Local Area or Watershed

19. The applicant does not propose to divert water from one local area and transport it to another area or watershed. Therefore, this review criterion is not applicable to the application.

F. Beneficial Use

20. Diverting water for stock watering and commercial purposes has long been recognized as beneficial use in Idaho.

Overall

21. The Department should approve Transfer No. 75738 as provided in Idaho Code § 42-222(1) subject to conditions necessary for the proper administration of the right.

22. The Department should approve Transfer No. 75739 as provided in Idaho Code § 42-222(1) subject to conditions necessary for the proper administration of the right.

ORDER

IT IS HEREBY ORDERED that Transfer 75738 is **APPROVED**. To facilitate the approval, the transferred portions of the Mathers water rights are renumbered as follows:

47-17510 to 47-17556
47-17512 to 47-17551
47-17514 to 47-17561

The attached approval document for Transfer 75738 sets forth the revised elements and conditions for Water Rights 47-8121, 47-17551, 47-17556, and 47-17561. The approval document is a component of this preliminary order.

IT IS ALSO HEREBY ORDERED that Transfer 75739 is **APPROVED**. To facilitate the approval, the transferred portions of the Mathers water rights are renumbered as follows:

47-17510 to 47-17557
47-17512 to 47-17552
47-17514 to 47-17562

The attached approval document for Transfer 75739 sets forth the revised elements and conditions for Water Rights 47-12499, 47-17552, 47-17557, and 47-17562. The approval document is a component of this preliminary order.

IT IS ALSO HEREBY ORDERED that the transfer of Water Rights 47-17551, 47-17556, 47-17561, 47-17552, 47-17557, and 47-17562 as authorized in Transfers 75738 and 75739 shall not be accomplished until Machados provide the Department an ownership change notice or other documentation of their possessory interest in Water Rights 47-17551, 47-17556, 47-17561, 47-17552, 47-17557, and 47-17562. If Machados submit an ownership change notice, it shall conform to the requirements of Idaho Code § 42-248.

Dated this 16th day of September, 2011.



SHELLEY KEEN
Hearing Officer

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
TRANSFER OF WATER RIGHT
TRANSFER NO. 75738

This is to certify that: MATTHEW M MACHADO and
JACQUELINE C MACHADO
3340 N 1100 E
BUHL ID 83316
(208)543-8775

have requested a change to the water right(s) listed below. This change in water right(s) is authorized pursuant to the provisions of Section 42-222, Idaho Code. A summary of the changes is also listed below. The authorized change for each affected water right, including conditions of approval, is shown on the following pages of this document.

Summary of Water Rights Before the Proposed Change

| <u>Right</u> | <u>Origin/Basis</u> | <u>Priority</u> | <u>Rate</u> | <u>Volume</u> | <u>Acre Limit</u> | <u>Total Acres</u> | <u>Source</u> |
|--------------|---------------------|-----------------|-------------|---------------|-------------------|--------------------|---------------|
| 47-8121 | WR/License | 09/21/1988 | 0.09 cfs | 23.3 af | N/A | N/A | GROUND WATER |
| 47-17551 | WR/Decreed | 11/06/1961 | 0.12 cfs | 26.4 af | 6.6 | 6.6 | GROUND WATER |
| 47-17556 | WR/Decreed | 08/08/1954 | 0.06 cfs | 24.0 af | 6.0 | 6.6 | GROUND WATER |
| 47-17561 | WR/Decreed | 04/03/1961 | 0.01 cfs | 4.0 af | 3.0 | 6.6 | GROUND WATER |

Purpose of Transfer (Changes Proposed)

| <u>Current Number</u> | <u>Split</u> | <u>POD</u> | <u>POU</u> | <u>Add POD</u> | <u>Period of Use</u> | <u>Nature of Use</u> |
|-----------------------|--------------|------------|------------|----------------|----------------------|----------------------|
| 47-8121 | NO | NO | NO | YES | NO | NO |
| 47-17551 | NO | YES | YES | NO | YES | YES |
| 47-17556 | NO | YES | YES | NO | YES | YES |
| 47-17561 | NO | YES | YES | NO | YES | YES |

Summary of Water Rights After the Approved Change

| <u>Existing Right</u> | <u>New No. (changed portion)</u> | <u>Transfer Rate</u> | <u>Transfer Volume</u> | <u>Acre Limit</u> | <u>Total Acres</u> | <u>New No. (remaining portion)</u> | <u>Remaining Rate</u> | <u>Remaining Volume</u> | <u>Remaining Acre Limit</u> | <u>Remaining Total Acres</u> |
|-----------------------|----------------------------------|----------------------|------------------------|-------------------|--------------------|------------------------------------|-----------------------|-------------------------|-----------------------------|------------------------------|
| 47-8121 | 47-8121 | 0.09 cfs | 23.3 af | N/A | N/A | | N/A | N/A | N/A | N/A |
| 47-17551 | 47-17551 | 0.12 cfs | 20.0 af | N/A | N/A | | N/A | N/A | N/A | N/A |
| 47-17556 | 47-17556 | 0.06 cfs | 18.0 af | N/A | N/A | | N/A | N/A | N/A | N/A |
| 47-17561 | 47-17561 | 0.01 cfs | 3.0 af | N/A | N/A | | N/A | N/A | N/A | N/A |
| COMBINED | | | | | | | | | | |
| TOTALS | | 0.21 cfs | 43.3 af | N/A | N/A | | N/A | N/A | N/A | N/A |

Detailed Water Right Description(s) attached

Dated this 16th day of September, 20 11

Shelley W. Keen
Hearing Officer

WATER RIGHT NO. 47-8121
As Modified by Transfer No. 75738

In accordance with the approval of Transfer No. 75738, Water Right No. 47-8121 is now described as follows.

Right Holder: MATTHEW M MACHADO and
 JACQUELINE C MACHADO
 3340 N 1100 E
 BUHL ID 83316

Priority Date: September 21, 1988

Source: GROUND WATER

| BENEFICIAL USE | From | To | Diversion Rate | Volume |
|-----------------------|-------------|-----------|-----------------------|---------------|
| STOCKWATER | 01/01 | to 12/31 | 0.09 CFS | 20.9 AF |
| DOMESTIC | 01/01 | to 12/31 | 0.04 CFS | 1.2 AF |
| COMMERCIAL | 01/01 | to 12/31 | 0.09 CFS | 1.2 AF |
| | | | 0.09 CFS | 23.3 AF |

LOCATION OF POINT(S) OF DIVERSION:

GROUND WATER NW¼SW¼, Sec. 9, Twp 11S, Rge 14E, B.M. TWIN FALLS County

GROUND WATER NW¼SW¼, Sec. 9, Twp 11S, Rge 14E, B.M. TWIN FALLS County

PLACE OF USE: STOCKWATER, DOMESTIC & COMMERCIAL

| Twp Rge Sec | NE | | | | NW | | | | SW | | | | SE | | | | Totals |
|-------------|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|--------|
| | NE | NW | SW | SE | NE | NW | SW | SE | NE | NW | SW | SE | NE | NW | SW | SE | |
| 11S 14E 9 | | | | | | | | | | | X | | | | | | |

CONDITIONS OF APPROVAL

1. Rights 47-8121, 47-17551, 47-17556, and 47-17561 when combined shall not exceed a total diversion rate of 0.21cfs and a total annual maximum diversion volume of 43.3 af
2. Prior to the diversion and use of water under this approval, the right holder shall comply with applicable county zoning and use ordinances.
3. Prior to the diversion and use of water under this approval, the right holder shall comply with applicable water quality permitting requirements administered by the Department of Environmental Quality or the Department of Agriculture.
4. Commercial use is for a dairy facility.
5. Domestic use is for 1 home.

WATER RIGHT NO. 47-8121
As Modified by Transfer No. 75738

CONDITIONS OF APPROVAL CONTINUED

6. The right holder shall accomplish the change authorized by this transfer within one year of the date of this approval.
7. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.

This water right is subject to all prior water rights and shall be administered in accordance with Idaho law and applicable rules of the Department of Water Resources.

Dated this 16th day of September, 2011

Shelley W. Keen
Hearing Officer



WATER RIGHT NO. 47-17551
As Modified by Transfer No. 75738

In accordance with the approval of Transfer No. 75738, Water Right No. 47-17551 is now described as follows.

Right Holder: MATHERS RANCH INC
 3585 E 3100 N
 KIMBERLY ID 83341

Priority Date: November 06, 1961

Source: GROUND WATER

| <u>BENEFICIAL USE</u> | <u>From</u> | <u>To</u> | <u>Diversion Rate</u> | <u>Volume</u> |
|-----------------------|-------------|-----------|-----------------------|---------------|
| STOCKWATER | 01/01 | to 12/31 | 0.12 CFS | 20.0 AF |
| COMMERCIAL | 01/01 | to 12/31 | 0.12 CFS | 20.0 AF |
| | | | 0.12 CFS | 20.0 AF |

LOCATION OF POINT(S) OF DIVERSION:

GROUND WATER NW¼SW¼, Sec. 9, Twp 11S, Rge 14E, B.M. TWIN FALLS County

GROUND WATER NW¼SW¼, Sec. 9, Twp 11S, Rge 14E, B.M. TWIN FALLS County

PLACE OF USE: STOCKWATER & COMMERCIAL

| Twp Rge Sec | NE | | | | NW | | | | SW | | | | SE | | | | Totals |
|-------------|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|--------|
| | NE | NW | SW | SE | NE | NW | SW | SE | NE | NW | SW | SE | NE | NW | SW | SE | |
| 11S 14E 9 | | | | | | | | | | X | | | | | | | |

CONDITIONS OF APPROVAL

1. Rights 47-17551, 47-17556, and 47-17561 when combined shall not exceed a total diversion rate of 0.12 cfs and a total annual maximum diversion volume of 20.0 af
2. Rights 47-8121, 47-17551, 47-17556, and 47-17561 when combined shall not exceed a total diversion rate of 0.21 cfs and a total annual maximum diversion volume of 43.3 af
3. Prior to the diversion and use of water under this approval, the right holder shall comply with applicable county zoning and use ordinances.
4. Prior to the diversion and use of water under this approval, the right holder shall comply with applicable water quality permitting requirements administered by the Department of Environmental Quality or the Department of Agriculture.
5. The approval of this transfer redefines all of the elements of this water right, and the new use of water authorized by this approval shall constitute the full extent of the right.
6. Commercial use is for a dairy facility.
7. The right holder shall accomplish the change authorized by this transfer within one year of the date of this approval.

WATER RIGHT NO. 47-17551
As Modified by Transfer No. 75738

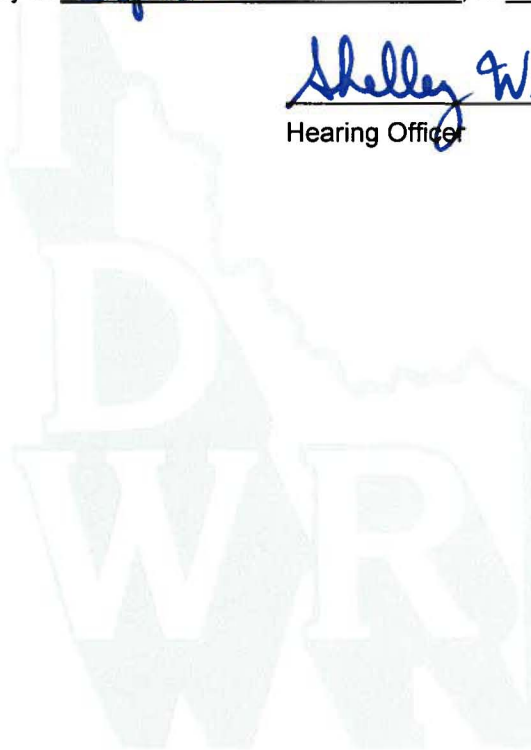
CONDITIONS OF APPROVAL CONTINUED

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. 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.

This water right is subject to all prior water rights and shall be administered in accordance with Idaho law and applicable rules of the Department of Water Resources.

Dated this 16th day of September, 20 11

Shelley W. Keen
Hearing Officer



WATER RIGHT NO. 47-17556
As Modified by Transfer No. 75738

In accordance with the approval of Transfer No. 75738, Water Right No. 47-17556 is now described as follows.

Right Holder: MATHERS RANCH INC
 3585 E 3100 N
 KIMBERLY ID 83341

Priority Date: August 08, 1954

Source: GROUND WATER

| <u>BENEFICIAL USE</u> | <u>From</u> | <u>To</u> | <u>Diversion Rate</u> | <u>Volume</u> |
|-----------------------|-------------|-----------|-----------------------|---------------|
| COMMERCIAL | 01/01 | to 12/31 | 0.06 CFS | 18.0 AF |
| STOCKWATER | 01/01 | to 12/31 | 0.06 CFS | 18.0 AF |
| | | | 0.06 CFS | 18.0 AF |

LOCATION OF POINT(S) OF DIVERSION:

GROUND WATER NW¼SW¼, Sec. 9, Twp 11S, Rge 14E, B.M. TWIN FALLS County

GROUND WATER NW¼SW¼, Sec. 9, Twp 11S, Rge 14E, B.M. TWIN FALLS County

PLACE OF USE: COMMERCIAL & STOCKWATER

| Twp | Rge | Sec | NE | | | | NW | | | | SW | | | | SE | | | | Totals |
|-----|-----|-----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|--------|
| | | | NE | NW | SW | SE | NE | NW | SW | SE | NE | NW | SW | SE | NE | NW | SW | SE | |
| 11S | 14E | 9 | | | | | | | | | | X | | | | | | | |

CONDITIONS OF APPROVAL

1. Rights 47-17551, 47-556, and 47-17561 when combined shall not exceed a total diversion rate of 0.12 cfs and a total annual maximum diversion volume of 20.0 af
2. Rights 47-8121, 47-17551, 47-17556, and 47-17561 when combined shall not exceed a total diversion rate of 0.21 cfs and a total annual maximum diversion volume of 43.3 af
3. Prior to the diversion and use of water under this approval, the right holder shall comply with applicable county zoning and use ordinances.
4. Prior to the diversion and use of water under this approval, the right holder shall comply with applicable water quality permitting requirements administered by the Department of Environmental Quality or the Department of Agriculture.
5. The approval of this transfer redefines all of the elements of this water right, and the new use of water authorized by this approval shall constitute the full extent of the right.
6. Commercial use is for a dairy facility.

WATER RIGHT NO. 47-17556
As Modified by Transfer No. 75738

CONDITIONS OF APPROVAL

7. The right holder shall accomplish the change authorized by this transfer within one 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. 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.

This water right is subject to all prior water rights and shall be administered in accordance with Idaho law and applicable rules of the Department of Water Resources.

Dated this 16th day of September, 2011

Shelley W. Keen
Hearing Officer



WATER RIGHT NO. 47-17561
As Modified by Transfer No. 75738

In accordance with the approval of Transfer No. 75738, Water Right No. 47-17561 is now described as follows.

Right Holder: MATHERS RANCH INC
 3585 E 3100 N
 KIMBERLY ID 83341

Priority Date: April 03, 1961

Source: GROUND WATER

| <u>BENEFICIAL USE</u> | <u>From</u> | <u>To</u> | <u>Diversion Rate</u> | <u>Volume</u> |
|-----------------------|-------------|-----------|-----------------------|---------------|
| STOCKWATER | 01/01 | to 12/31 | 0.01 CFS | 3.0 AF |
| COMMERCIAL | 01/01 | to 12/31 | 0.01 CFS | 3.0 AF |
| | | | 0.01 CFS | 3.0 AF |

LOCATION OF POINT(S) OF DIVERSION:

GROUND WATER NW¼SW¼, Sec. 9, Twp 11S, Rge 14E, B.M. TWIN FALLS County

GROUND WATER NW¼SW¼, Sec. 9, Twp 11S, Rge 14E, B.M. TWIN FALLS County

PLACE OF USE: STOCKWATER & COMMERCIAL

| Twp Rge Sec | NE | | | | NW | | | | SW | | | | SE | | | | Totals |
|-------------|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|--------|
| | NE | NW | SW | SE | NE | NW | SW | SE | NE | NW | SW | SE | NE | NW | SW | SE | |
| 11S 14E 9 | | | | | | | | | | X | | | | | | | |

CONDITIONS OF APPROVAL

1. Rights 47-17551, 47-556, and 47-17561 when combined shall not exceed a total diversion rate of 0.12 cfs and a total annual maximum diversion volume of 20.0 af
2. Rights 47-8121, 47-17551, 47-17556, and 47-17561 when combined shall not exceed a total diversion rate of 0.21 cfs and a total annual maximum diversion volume of 43.3 af
3. Prior to the diversion and use of water under this approval, the right holder shall comply with applicable county zoning and use ordinances.
4. Prior to the diversion and use of water under this approval, the right holder shall comply with applicable water quality permitting requirements administered by the Department of Environmental Quality or the Department of Agriculture.
5. The approval of this transfer redefines all of the elements of this water right, and the new use of water authorized by this approval shall constitute the full extent of the right.
6. Commercial use is for a dairy facility.
7. The right holder shall accomplish the change authorized by this transfer within one year of the date of this approval.

WATER RIGHT NO. 47-17561
As Modified by Transfer No. 75738

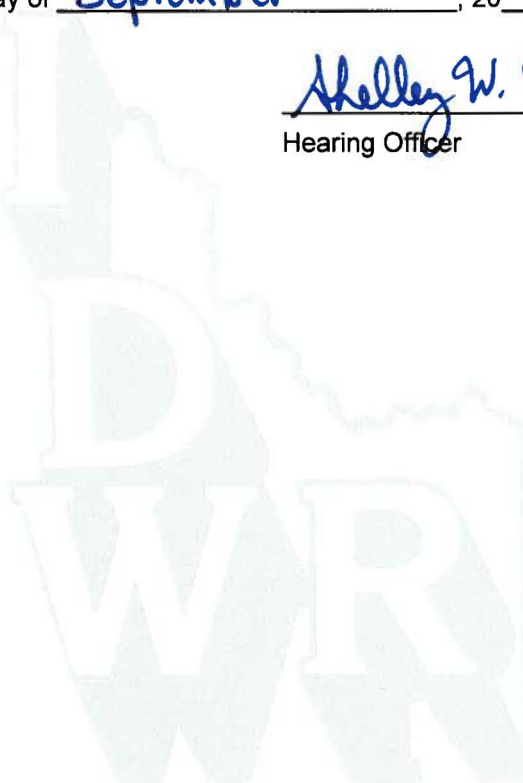
CONDITIONS OF APPROVAL

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. 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.

This water right is subject to all prior water rights and shall be administered in accordance with Idaho law and applicable rules of the Department of Water Resources.

Dated this 16th day of September, 20 11

Shelley W. Keen
Hearing Officer



STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
TRANSFER OF WATER RIGHT
TRANSFER NO. 75739

This is to certify that: **MATTHEW M MACHADO** And
JACQUELINE C MACHADO
 3340 N 1100 E
 BUHL ID 83316
 (208)543-8775

has requested a change to the water right(s) listed below. This change in water right(s) is authorized pursuant to the provisions of Section 42-222, Idaho Code. A summary of the changes is also listed below. The authorized change for each affected water right, including conditions of approval, is shown on the following pages of this document.

Summary of Water Rights Before the Proposed Change

| <u>Right</u> | <u>Origin/Basis</u> | <u>Priority</u> | <u>Rate</u> | <u>Volume</u> | <u>Acre Limit</u> | <u>Total Acres</u> | <u>Source</u> |
|--------------|---------------------|-----------------|-------------|---------------|-------------------|--------------------|---------------|
| 47-12499 | WR/Decreed | 11/01/1960 | 0.07 cfs | N/A | N/A | N/A | GROUND WATER |
| 47-17552 | WR/Decreed | 11/06/1961 | 0.03 cfs | 6.4 af | 1.6 | 1.6 | GROUND WATER |
| 47-17557 | WR/Decreed | 08/08/1954 | 0.01 cfs | 5.8 af | 1.5 | 1.6 | GROUND WATER |
| 47-17562 | WR/Decreed | 04/03/1961 | 0.01 cfs | 1.0 af | 0.7 | 1.6 | GROUND WATER |

Purpose of Transfer (Changes Proposed)

| <u>Current Number</u> | <u>Split</u> | <u>POD</u> | <u>POU</u> | <u>Add POD</u> | <u>Period of Use</u> | <u>Nature of Use</u> |
|-----------------------|--------------|------------|------------|----------------|----------------------|----------------------|
| 47-12499 | NO | NO | YES | NO | NO | NO |
| 47-17552 | NO | YES | YES | NO | YES | YES |
| 47-17557 | NO | YES | YES | NO | YES | YES |
| 47-17562 | NO | YES | YES | NO | YES | YES |

Summary of Water Rights After the Approved Change

| <u>Existing Right</u> | <u>New No. (changed portion)</u> | <u>Transfer Rate</u> | <u>Transfer Volume</u> | <u>Acre Limit</u> | <u>Total Acres</u> | <u>New No. (remaining portion)</u> | <u>Remaining Rate</u> | <u>Remaining Volume</u> | <u>Remaining Acre Limit</u> | <u>Remaining Total Acres</u> |
|------------------------|----------------------------------|----------------------|------------------------|-------------------|--------------------|------------------------------------|-----------------------|-------------------------|-----------------------------|------------------------------|
| 47-12499 | 47-12499 | 0.07 cfs | 14.6 af | N/A | N/A | | N/A | N/A | N/A | N/A |
| 47-17552 | 47-17552 | 0.03 cfs | 4.8 af | N/A | N/A | | N/A | N/A | N/A | N/A |
| 47-17557 | 47-17557 | 0.01 cfs | 4.5 af | N/A | N/A | | N/A | N/A | N/A | N/A |
| 47-17562 | 47-17562 | 0.01 cfs | 0.8 af | N/A | N/A | | N/A | N/A | N/A | N/A |
| COMBINED TOTALS | | 0.10 cfs | 19.4 af | N/A | N/A | | N/A | N/A | N/A | N/A |

Detailed Water Right Description(s) attached

Dated this 16th day of September, 20 11

Shelley W. Keen
 Hearing Officer

WATER RIGHT NO. 47-12499
As Modified by Transfer No. 75739

In accordance with the approval of Transfer No. 75739, Water Right No. 47-12499 is now described as follows.

Right Holder: JACQUELINE C MACHADO And
 MATTHEW M MACHADO
 3340 N 1100 E
 BUHL ID 83316

Priority Date: November 01, 1960

Source: GROUND WATER

| <u>BENEFICIAL USE</u> | <u>From</u> | <u>To</u> | <u>Diversion Rate</u> | <u>Volume</u> |
|-----------------------|-------------|-----------|-----------------------|---------------|
| DOMESTIC | 01/01 | to 12/31 | 0.06 CFS | 14.6 AF |
| STOCKWATER | 01/01 | to 12/31 | 0.07 CFS | 14.6 AF |
| TOTAL: | | | 0.07 CFS | 14.6 AF |

LOCATION OF POINT(S) OF DIVERSION:

GROUND WATER SE $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 8, Twp 11S, Rge 14E, TWIN FALLS County

PLACE OF USE: DOMESTIC

| Twp Rge Sec | NE | | | | NW | | | | SW | | | | SE | | | | Totals |
|-------------|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|--------|
| | NE | NW | SW | SE | NE | NW | SW | SE | NE | NW | SW | SE | NE | NW | SW | SE | |
| 11S 14E 8 | | | | | | | | | | | | | | | | X | |

PLACE OF USE: STOCKWATER

| Twp Rge Sec | NE | | | | NW | | | | SW | | | | SE | | | | Totals |
|-------------|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|--------|
| | NE | NW | SW | SE | NE | NW | SW | SE | NE | NW | SW | SE | NE | NW | SW | SE | |
| 11S 14E 8 | | | | | | | | | | | | | | | X | X | |

CONDITIONS OF APPROVAL

1. Rights 47-12499, 47-15552, 47-17557, and 47-17562 when combined shall not exceed a total diversion rate of 0.10 cfs and a total annual maximum diversion volume of 19.4 af
2. After specific notification by the Department, the right holder shall install a suitable measuring device or shall enter into an agreement with the Department to use power records to determine the amount of water diverted and shall annually report the information to the Department.
3. Prior to the diversion and use of water under this approval, the right holder shall comply with applicable county zoning and use ordinances.
4. Prior to the diversion and use of water under this approval, the right holder shall comply with applicable water quality permitting requirements administered by the Department of Environmental Quality or the Department of Agriculture.

WATER RIGHT NO. 47-12499
As Modified by Transfer No. 75739

CONDITIONS OF APPROVAL CONTINUED

5. The quantity of water decreed for this water right is not a determination of historical beneficial use.
6. The quantity of water under this right shall not exceed 13,000 gallons per day.
7. Domestic use is for 1 home.
8. The right holder shall accomplish the change authorized by this transfer within one year of the date of this approval.
9. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
10. 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.

This water right is subject to all prior water rights and shall be administered in accordance with Idaho law and applicable rules of the Department of Water Resources.

Dated this 16th day of September, 2011

Shelley W. Keen
Hearing Officer

WATER RIGHT NO. 47-17552
As Modified by Transfer No. 75739

In accordance with the approval of Transfer No. 75739, Water Right No. 47-17552 is now described as follows.

Right Holder: MATHERS RANCH INC
 3585 E 3100 N
 KIMBERLY ID 83341

Priority Date: November 06, 1961

Source: GROUND WATER

| <u>BENEFICIAL USE</u> | <u>From</u> | <u>To</u> | <u>Diversion Rate</u> | <u>Volume</u> |
|-----------------------|-------------|-----------|-----------------------|---------------|
| COMMERCIAL | 01/01 | to 12/31 | 0.03 CFS | 4.8 AF |
| STOCKWATER | 01/01 | to 12/31 | 0.03 CFS | 4.8 AF |
| TOTAL: | | | 0.03 CFS | 4.8 AF |

LOCATION OF POINT(S) OF DIVERSION:

GROUND WATER SE¼SE¼, Sec. 8, Twp 11S, Rge 14E, TWIN FALLS County

PLACE OF USE: COMMERCIAL & STOCKWATER

| Twp Rge Sec | NE | | | | NW | | | | SW | | | | SE | | | | |
|-------------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|---------------|
| | <u>NE</u> | <u>NW</u> | <u>SW</u> | <u>SE</u> | <u>NE</u> | <u>NW</u> | <u>SW</u> | <u>SE</u> | <u>NE</u> | <u>NW</u> | <u>SW</u> | <u>SE</u> | <u>NE</u> | <u>NW</u> | <u>SW</u> | <u>SE</u> | <u>Totals</u> |
| 11S 14E 8 | | | | | | | | | | | | | | | X | X | |

CONDITIONS OF APPROVAL

1. Rights 47-17552, 47-17557, and 47-17562 when combined shall not exceed a total diversion rate of 0.03 cfs and a total annual maximum diversion volume of 4.8 af
2. Rights 47-12499, 47-15552, 47-17557, and 47-17562 when combined shall not exceed a total diversion rate of 0.10 cfs and a total annual maximum diversion volume of 19.4 af
3. After specific notification by the Department, the right holder shall install a suitable measuring device or shall enter into an agreement with the Department to use power records to determine the amount of water diverted and shall annually report the information to the Department.
4. Prior to the diversion and use of water under this approval, the right holder shall comply with applicable county zoning and use ordinances.
5. Prior to the diversion and use of water under this approval, the right holder shall comply with applicable water quality permitting requirements administered by the Department of Environmental Quality or the Department of Agriculture.
6. The approval of this transfer redefines all of the elements of this water right, and the new use of water authorized by this approval shall constitute the full extent of the right.
7. Commercial use is for a feedlot.

WATER RIGHT NO. 47-17552
As Modified by Transfer No. 75739

CONDITIONS OF APPROVAL CONTINUED

8. The right holder shall accomplish the change authorized by this transfer within one year of the date of this approval.
9. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
10. 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.

This water right is subject to all prior water rights and shall be administered in accordance with Idaho law and applicable rules of the Department of Water Resources.

Dated this 16th day of September, 20 11

Shelley W. Kern
Hearing Officer

WATER RIGHT NO. 47-17557
As Modified by Transfer No. 75739

In accordance with the approval of Transfer No. 75739, Water Right No. 47-17557 is now described as follows.

Right Holder: MATHERS RANCH INC
 3585 E 3100 N
 KIMBERLY ID 83341

Priority Date: August 08, 1954

Source: GROUND WATER

| <u>BENEFICIAL USE</u> | <u>From</u> | <u>To</u> | <u>Diversion Rate</u> | <u>Volume</u> |
|-----------------------|-------------|-----------|-----------------------|---------------|
| STOCKWATER | 01/01 | to 12/31 | 0.01 CFS | 4.5 AF |
| COMMERCIAL | 01/01 | to 12/31 | 0.01 CFS | 4.5 AF |
| TOTAL: | | | 0.01 CFS | 4.5 AF |

LOCATION OF POINT(S) OF DIVERSION:

GROUND WATER SE¼SE¼, Sec. 8, Twp 11S, Rge 14E, TWIN FALLS County

PLACE OF USE: STOCKWATER & COMMERCIAL

| Twp Rge Sec | NE | | | | NW | | | | SW | | | | SE | | | | |
|-------------|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|--------|
| | NE | NW | SW | SE | NE | NW | SW | SE | NE | NW | SW | SE | NE | NW | SW | SE | Totals |
| 11S 14E 8 | | | | | | | | | | | | | | | X | X | |

CONDITIONS OF APPROVAL

1. Rights 47-17552, 47-17557, and 47-17562 when combined shall not exceed a total diversion rate of 0.03 cfs, a total annual maximum diversion volume of 4.8 af
2. Rights 47-12499, 47-15552, 47-17557, and 47-17562 when combined shall not exceed a total diversion rate of 0.10 cfs, a total annual maximum diversion volume of 19.4 af
3. After specific notification by the Department, the right holder shall install a suitable measuring device or shall enter into an agreement with the Department to use power records to determine the amount of water diverted and shall annually report the information to the Department.
4. Prior to the diversion and use of water under this approval, the right holder shall comply with applicable county zoning and use ordinances.
5. Prior to the diversion and use of water under this approval, the right holder shall comply with applicable water quality permitting requirements administered by the Department of Environmental Quality or the Department of Agriculture.
6. The approval of this transfer redefines all of the elements of this water right, and the new use of water authorized by this approval shall constitute the full extent of the right.
7. Commercial use is for a feedlot.

WATER RIGHT NO. 47-17557
As Modified by Transfer No. 75739

CONDITIONS OF APPROVAL CONTINUED

8. The right holder shall accomplish the change authorized by this transfer within one year of the date of this approval.
9. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
10. 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.

This water right is subject to all prior water rights and shall be administered in accordance with Idaho law and applicable rules of the Department of Water Resources.

Dated this 16th day of September, 2011

Shelley W. Keen
Hearing Officer

WATER RIGHT NO. 47-17562
As Modified by Transfer No. 75739

In accordance with the approval of Transfer No. 75739, Water Right No. 47-17562 is now described as follows.

Right Holder: MATHERS RANCH INC
3585 E 3100 N
KIMBERLY ID 83341

Priority Date: April 03, 1961

Source: GROUND WATER

| <u>BENEFICIAL USE</u> | <u>From</u> | <u>To</u> | <u>Diversion Rate</u> | <u>Volume</u> |
|-----------------------|-------------|-----------|-----------------------|---------------|
| COMMERCIAL | 01/01 | to 12/31 | 0.01 CFS | 0.8 AF |
| STOCKWATER | 01/01 | to 12/31 | 0.01 CFS | 0.8 AF |
| TOTAL: | | | 0.01 CFS | 0.8 AF |

LOCATION OF POINT(S) OF DIVERSION:

GROUND WATER SE¼SE¼, Sec. 8, Twp 11S, Rge 14E, TWIN FALLS County

PLACE OF USE: COMMERCIAL & STOCKWATER

| Twp Rge Sec | NE | | | | NW | | | | SW | | | | SE | | | | |
|-------------|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|--------|
| | NE | NW | SW | SE | NE | NW | SW | SE | NE | NW | SW | SE | NE | NW | SW | SE | Totals |
| 11S 14E 8 | | | | | | | | | | | | | | | X | X | |

CONDITIONS OF APPROVAL

1. Rights 47-17552, 47-17557, and 47-17562 when combined shall not exceed a total diversion rate of 0.03 cfs, a total annual maximum diversion volume of 4.8 af
2. Rights 47-12499, 47-15552, 47-17557, and 47-17562 when combined shall not exceed a total diversion rate of 0.10 cfs, a total annual maximum diversion volume of 19.4 af
3. After specific notification by the Department, the right holder shall install a suitable measuring device or shall enter into an agreement with the Department to use power records to determine the amount of water diverted and shall annually report the information to the Department.
4. Prior to the diversion and use of water under this approval, the right holder shall comply with applicable county zoning and use ordinances.
5. Prior to the diversion and use of water under this approval, the right holder shall comply with applicable water quality permitting requirements administered by the Department of Environmental Quality or the Department of Agriculture.
6. The approval of this transfer redefines all of the elements of this water right, and the new use of water authorized by this approval shall constitute the full extent of the right.
7. Commercial use is for a feedlot.

WATER RIGHT NO. 47-17562
As Modified by Transfer No. 75739

CONDITIONS OF APPROVAL CONTINUED

8. The right holder shall accomplish the change authorized by this transfer within one year of the date of this approval.
9. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
10. 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.

This water right is subject to all prior water rights and shall be administered in accordance with Idaho law and applicable rules of the Department of Water Resources.

Dated this 16th day of September, 20 11



Hearing Officer

