BEFORE THE DEPARTMENT OF WATER RESOURCES

FOR 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	)	**ORDER DENYING PETITION FOR RECONSIDERATION**

On May 22, 2006, the hearing officer issued a *Preliminary Order and Default Order* ("Preliminary Order"), approving application for transfer no. 71692 in the name of David L. & Shirlene Funk. The preliminary order was served on May 22, 2006 as evidenced by the certificate of mailing.

On June 5, 2006, Protestants Kenneth Warr, Thomas C. Draper, and Kenneth Skow, petitioned the hearing officer to reconsider the preliminary order approving application for transfer no. 71692. The petition for reconsideration was timely filed.

The petitioners ("protestants") state that "the evidence is clear that nitrates will pose a high risk factor for the neighbors near the Funk Dairy." The protestants also assert that the "State Dairy Siting Committee did not have the evidence and the Nutrient Management Plan does not adequately address the potential ground water contaminations due to the nitrates and other CAFO associated pathogens." Finally, the protestants argue that because of "the depleting ground water in the Eastern Snake River Plain Aquifer, the ability for the aquifer to flush these nitrates is greatly reduced and it creates a definite hazard to the drinking water of the areas' residents."

The protestants expressly request that the hearing officer submit the matter "to the Department of Environmental Quality for review and approval prior to this application being approved." The protestants also infer that the hearing officer should deny the application for transfer.

The evidence available to the hearing officer shows that the State Dairy Siting Committee considered the location of the proposed dairy in an area of elevated nitrate levels. The committee also considered other factors related to ground water quality. After these considerations, the committee gave the dairy site its best rating.

The Department of Environmental Quality has delegated to the Department of Agriculture the oversight of nutrient management for confined animal feeding operations, including dairies. The evidence at the hearing established that David L. & Shirlene Funk are complying with requirements of the Department of Agriculture related to nutrient management.

The applicant established its prima facie case that operation of a proposed dairy would not violate Idaho water quality standards despite concerns expressed by the hearing officer and concerns expressed by the protestant The protestant did not present evidence to rebut the prima facie case established by the applicants As a result, application for transfer no. 71692 must be approved

ORDER

IT IS HEREBY ORDERED that the petition for reconsideration filed by Kenneth Warr, Thomas C. Draper, and Kenneth Skow is **denied.**

Dated this 20th day of June, 2006

Gary Spackman
Hearing Officer