BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT TO APPROPRIATE WATER NO. 61-12063, IN THE NAME OF THE U.S. DEPARTMENT OF INTERIOR, BUREAU OF LAND MANAGEMENT	)	**PRELIMINARY ORDER**

On March 17, 2005, United States Department of Interior, Bureau of Land Management ("BLM") filed an application for permit to appropriate water no 61-12063, with the Idaho Department of Water Resources ("IDWR"). On November 7, 2005, BLM amended application no. 61-12063, increasing the proposed flow rate from 0.50 cfs to 0.67 cfs. Application no. 61-12063 proposes the appropriation of 0.67 cfs from ground water for fire protection. IDWR published a notice of the application. Idaho Farmway, Inc. filed a protest against the application

On August 3, 2006, IDWR conducted a hearing for the protest Fred Price appeared on behalf of BLM. Dan Weitz appeared on behalf of Idaho Farmway. The following is a list of exhibits received into evidence at the hearing:

Exhibit No.	Description of Exhibit
Applicant's Exhibit No. 1	Plat map of United States property located in Township 4 South, Range 7 East
Applicant's Exhibit No. 3	Order from the Interior Board of Land Appeals ("IBLA") regarding Idaho Farmway rights-of-way on federal land
Protestant's Exhibit A	Transfer no. 72408 in the name of Idaho Farmway
Protestant's Exhibit B	Letter of transmittal approving transfer no. 72408

Applicant's Exhibit No. 3 was received into evidence with the restriction that IDWR will only consider the decision as it pertains to the right-of-way for the well that is the subject matter of application for permit to appropriate water no. 61-12063. In addition, several documents are attached to the application for permit no. 61-12063 that was submitted by BLM. Idaho Farmway objected to consideration of some of these documents. The parties and IDWR agreed that any discussions of abandonment in the documents would only be considered by IDWR as they applied to abandonment of the well right-of-way

Based on the information presented at the hearing, IDWR finds, concludes, and orders as follows:

FINDINGS OF FACT

1. In 1961 and 1962, Harvey Groefsema drilled a twenty-two (22) inch irrigation well in the SWSE[1] of Section 9, Township 4 South, Range 7 East. Two water right licenses in IDWR's files, numbered as 61-2131 and 61-2136, were issued authorizing diversion of water from the well for irrigation of nearby property. In addition, the Snake River Basin Adjudication Court also decreed a beneficial use claim authorizing diversion of water from the well, numbered in IDWR's records as 61-11920.

2. The well and some of the conveyance works were constructed on land owned by the federal government and administered by BLM.

3. In 1994, Idaho Farmway acquired the land identified as a place of use for water rights authorizing diversion from the well. Following Idaho Farmway's acquisition of the property, water was diverted from the well for highway construction, but very little if any water was diverted from the well for irrigation.

4. In 2000, BLM initiated a proceeding to revoke the rights-of-way previously granted for the well. On February 26, 2004, the Interior Board of Land Appeals in Arlington, Virginia issued an order finding that the right-of-way on BLM land held by Idaho Farmway had been abandoned. After the decision by the IBLA, Idaho Farmway filed application for transfer no. 72408 with IDWR, seeking to change the point of diversion for water right nos. 61-2131, 61-2136, and 61-11920. The application for transfer was approved on February 14, 2006.

5. The well located on BLM property in the SWSE, Section 9, Township 4 South, Range 7 East, is no longer a valid point of diversion for the water rights owned by Idaho Farmway. Idaho Farmway is no longer able to divert water from the well located on BLM property.

6. Application no. 61-12063 proposes the following:

Flow rate:	0.67 cfs
Purpose of use:	Fire protection
Source:	Ground water
Point of Diversion:	SWSWSE, Sec. 9, T4S, R7E
Place of Use:	SWSWSE, Sec. 9, T4S, R7E
Period of use:	April 1 through November 30

7. At the hearing, the parties stipulated that the federal government has sufficient financial resources to complete the project and that the application was not filed for purposes of speculation, delay, or in bad faith.

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[1] In this decision, the public land survey numeric descriptor "1/4" is assumed to follow each two alpha character public land survey locator when the numeric descriptor is missing. For instance, in this example, the full description would be the SW1/4SE1/4, Section 9, Township 4 South, Range 7 East, Boise Meridian.

8. Water from the well will be used within an approximate area circumscribed by a 12-mile radius from the well.

9. While there is no way to predict the amount of water that might be used to fight fires, the water used will be in the tens-of-thousands of gallons per day during the time when a fire is actually being fought.

10. Although not a part of the record, some hypothetical computations may be of worth. If during a fire 50,000 gallons per day are diverted from the well, and there are 20-days of active fire fighting within a 12-mile circle of the well during a given season, the maximum amount of water that would be diverted is one-million (1,000,000) gallons. This equates to approximately three (3) acre-feet of water, less than the quantity needed to irrigate one acre. The hearing officer believes these numbers are greatly inflated, and that diversion from the well for fire fighting will be sparing and intermittent.

11. The well is located within the Mountain Home Ground Water Management Area. IDWR has not approved applications for new appropriations within the Mountain Home Ground Water Management Area, except applications proposing use of water for domestic or municipal purposes, or applications proposing limited use of water for a significant public interest.

CONCLUSIONS OF LAW

1. Idaho Code § 42-203A states in pertinent part:

> In all applications whether protested or not protested, where the proposed use is such (a) that it will reduce the quantity of water under existing water rights, or (b) that the water supply itself is insufficient for the purpose for which it is sought to be appropriated, or (c) where it appears to the satisfaction of the director that such application is not made in good faith, is made for delay or speculative purposes, or (d) that the applicant has not sufficient financial resources with which to complete the work involved therein, or (e) that it will conflict with the local public interest as defined in section 42-202B, Idaho Code, or (f) that it is contrary to conservation of water resources within the state of Idaho, or (g) that it will 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; the director of the department of water resources may reject such application and refuse issuance of a permit therefor, or may partially approve and grant a permit for a smaller quantity of water than applied for, or may grant a permit upon conditions.

2. The applicant bears the ultimate burden of proof regarding all the factors set forth in Idaho Code § 42-203A.

3. Occasional intermittent diversion of water from the proposed point of diversion will not reduce the quantity of water under existing water rights.

4. There is sufficient water in the aquifer from which water is sought to be appropriated to allow diversion of water for fire fighting.

5. The application is not filed for purposes of speculation, delay, or in bad faith.

6. The applicant has sufficient resources to complete the project.

7. In the Mountain Home Ground Water Management Area, appropriation of the limited quantity of water needed for fire fighting is in the local public interest.

8. Because of the small quantities of ground water that will be diverted under this water right, the proposed use is consistent with conservation of the waters of the state of Idaho.

9. This permit should be approved.

ORDER

IT IS HEREBY ORDERED that application to appropriate water no. 61-12063 is **approved** subject to the following conditions:

1. Proof of application of water to beneficial use shall be submitted on or before **December 01, 2007.**

2. Subject to all prior water rights.

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

4. Water shall not be diverted for fire protection use under this right except to fight or repel an existing fire.

5. 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 determine the amount of water diverted from power records and shall annually report the information to the Department.

Dated this 1st day of December, 2006.

Gary Spackman

Gary Spackman
Hearing Officer