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BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the matter of:

BRUNEAU CATTLE CO.,

Owyhee County, Idaho,

Respondent

DOCKET NO. CWA-10-2007-0016

PRE-HEARING INFORMATION
EXCHANGE

COMES NOW Respondent, Bruneau Cattle Company ("BCC"), by and through its undersigned counsel, and hereby provides this Information Exchange pursuant to the Administrative Law Judge Nissen's Order dated May 16, 2007 and consistent with 40 CFR Part 22.

1. Location of Hearing. Respondent requests that the hearing take place in Boise, Idaho.
2. List of Witnesses. At this time Respondent may call the following witnesses: Eric Davis, President, Bruneau Cattle Company. Mr. Davis will testify about all of the issues raised in Respondent's Answer including how wastewater is managed at Respondent's CAFO, his personal observation about wastewater containment during storm events over the past five years

including the significant storm events that occurred in December 2005, the history of NPDES Permit coverage for Respondent's facility, environmental improvements to the CAFO made by Respondent, the condition of the waste containment structures along the North pens over the last five years, discharges to the pasture from the South pens, past state and federal agency inspections and Respondent's ability to pay whatever penalty may be assessed in this matter.

Eugene Davis, Bruneau Cattle Company. Mr. Davis will testify about wastewater management at Respondent's facility over the past forty years, his personal observations about how wastewater is managed during storm events and his involvement in the maintenance activities of the berms adjacent to the North Pens in November, 2005.

Frank Davis, Ditch Rider for the South Side Canal Company. Mr. Davis will testify about the operations of the South Side Canal throughout the year, diversions made from the canal and under what flow regimes water in the canal reaches CJ Strike Reservoir.

Bill McBride, Bruneau Cattle Company. Mr. McBride will testify about his personal observation about waste management at Respondent's facility over the past five years.

Idaho Department of Agriculture (IDA) Employees. Respondent may call any of the employees identified on IDA inspection reports and records that visited the facility over the last five (5) years as to the condition of waste containment structures at the time of inspections.

Travis Kator, EAC Engineering. Mr. Kator will testify about the adequacy of waste containment structures at Respondent's facility, an analysis of the weather and soil conditions at Respondent's facility and whether the discharges alleged by Complainant occurred. If Mr. Kator's findings are included in a written report that will be submitted into evidence, Respondent will timely supplement this Information Exchange. Also, Respondent reserves its

right to supplement this response depending upon Complainant's response to Information Exchange.

Doug Black, CPA. Mr. Black will testify about the ability of Respondent to pay penalties.

At this time documents and exhibits that will be proffered into evidence are attached and are identified as Respondent's Exhibit A through Q. Respondent reserves the right to supplement these exhibits depending upon Complainant's responses to Information Exchange

3. NPDES Permit Coverage. Respondent's 2003 NPDES application as well as prior applications, letters from EPA and applicable Permits from 1974 to the present are attached as Exhibits B through M. When Respondent applied for Permit coverage in 2003, Respondent believed it was already covered by whatever Permit was in effect at the time. The 2003 application was in response to new rules issued by EPA at the time. Respondent does not have any documents or correspondence from EPA that it was necessary to reapply for permit coverage in 1996-1997, and Respondent does not have any documentation that it applied for Permit coverage in 1996-1997.

4. South Side Canal. Diversions from the Bruneau River are the principal source of flows in the South Side Canal. Prior to irrigation season each spring, flows in the South Side Canal are discontinued to allow water users to conduct maintenance activities. During irrigation season (April 15-October 15) all water in the canal is often diverted before it reaches CJ Strike Reservoir. Irrigation return flows from farm land in the watershed at times provide flows in the canal during irrigation season. The time period when it is likely that water from the canal flows directly to CJ Strike Reservoir would most likely be during the winter months. Respondent is gathering additional information on this issue and will supplement this response if necessary.

5. South Side Canal. Since the South Side Canal is a man made structure that does not flow continuously, Respondent believes based on recent United State Supreme Court decisions and Agency Guidance that such a water body is not navigable in the traditional sense. As noted above, Respondent does acknowledge that the South Side Canal may flow into CJ Strike Reservoir during certain times of the year. Respondent is unaware of any information that would suggest that any "pollutants from Respondent's facility" have ever reached CJ Strike Reservoir and therefore was the basis for Respondent's denial in its Answer. As noted in Respondent's Answer, and its Response to No. 6 below, Respondent acknowledges during an extraordinary storm event in late December, 2005, runoff from one of the North pens may have washed into the South Side Canal on one day. Respondent does not know if any of that runoff contained pollutants or if such pollutants actually reached CJ Strike Reservoir. Respondent assumes that it is Complainant's burden of proof to demonstrate the factual basis for such a discharge of pollutants into C.J. Strike Reservoir.

6. December, 2005 Storm Events and Berm Repair. As noted in response to No. 2., the precipitation events in December 2005 were very unusual for the area. Mr. Kator will testify about the amount of precipitation during this time period. The fact that there may have been a discharge on one of the days during these storm events at the far north end of the North Pens is based upon the personal observations of Eric Davis, Eugene Davis and Bill McBride at the time and is further supported by photographs taken by IIDA and Complainant in January and February, 2006.

Eric Davis and Eugene Davis will testify that during replacement of water tanks in the North Pens and in November, 2005, a portion of the berm at the far north end of the north pens was compromised. It was Respondent's intent to fix this berm but it did not do so prior to the

storm events in December, 2005. Prior to the Fall of 2005 the berm along the north pen was adequate to contain and did contain any runoff from the North Pens during all storm events prior to October 2005. This is based on the observation of Respondent's employees and officers throughout this time period and is supported by inspection reports from ISDA during the same time period in which ISDA determined that containment facilities were adequate at the facility. After the EPA inspection in February 2006, Respondent has built up these berms to contain any runoff. Recently in response to recommendations from ISDA Respondent has further built up these berms. No discharges to the South Side canal due to runoff from the North pens have occurred since December, 2005. Mr. Kator will testify whether the current conditions of the berms along the North Pens are adequate to contain any further runoff from the north pens.

7. Discharges From South Pens. Because of the configuration of Respondent's facility and the normally dry conditions in the area it is unusual for there to be any runoff from the South Pens. When runoff does occur it reports to a 27 acre pasture where it infiltrates into the ground. At the far north end of the pasture there is a pond that contains irrigation return water during irrigation season and a small dam that contains water within the pond. As a result of the extraordinary storm events that occurred in December, 2005, runoff from the South Pens did reach the pasture and did reach the pond. This was the first time runoff water from the South Pens had ever reached the pond in the past twenty years or more. Mr. Davis was closely monitoring the water levels in the pond during this December 2005 time period to avoid any discharge and was placing checks in the dam to ensure that the pond did not overflow. Mr. Davis will testify that the pond never overflowed in the winter in December 2005 and in January 2006 and shortly after the precipitation ended, water levels in the pond subsided and eventually evaporated. No runoff water from the South Pens ever entered a water of the United States. Each

spring, including the spring of 2006, the pond and ditches are cleaned prior to the new irrigation season.


8. The test results referred to in Paragraph 19 are attached as Exhibit Q and were taken by EPA on the date of Complainant's inspection in February 2006. In addition to said test results, the evidence will demonstrate that the C.J. Strike Reservoir impounds a portion of the Snake River. Thousands of square miles of irrigated agriculture return flows run into the Snake River and its tributaries upstream of the Reservoir. Numerous municipalities discharge storm water and waste water into the Snake River upstream of the Reservoir pursuant to Permits issued by Complainant. Hundreds of additional commercial and industrial operations discharge storm water and process water containing pollutants into the Snake River upstream of the Reservoir pursuant to permits issued by Complainant. Accordingly Respondent denies that its facility has ever had any measurable or theoretical affect on whatever the water quality conditions may be in C.J. Strike Reservoir.

9. Respondent is contending that any significant penalty would exceed its ability to pay, although the exact amount of the penalty Complainant is seeking cannot be clearly discerned from the Complainant in this matter. Assuming a maximum penalty could be assessed, Respondent will maintain that such a penalty does exceed its ability to pay. In support of this contention, Respondent attaches its state and federal income tax returns for the past three years as Exhibits N through P. Respondent maintains that these documents are "proprietary," "company confidential" and "business confidential" information pursuant 40 CFR Parts 2 and Part 19 and applicable federal laws and requests that these documents be kept confidential and treated as confidential throughout the duration of this proceeding consistent with applicable federal laws.

10. Change of Address. Please note that the Administrative Law Judge's Order incorrectly identifies the address for counsel for Respondent. Counsel's correct address is 101 S. Capitol Blvd., Ste. 1900, Boise, Idaho 83702.

DATED: June 14, 2007.

STOEL RIVES LLP


Kevin J. Beaton
Attorneys for Respondent

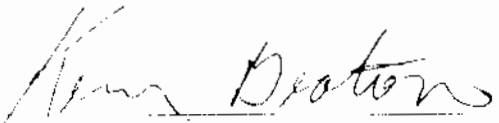
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of June, 2007, I caused to be served a true copy of the foregoing PRE-HEARING INFORMATION EXCHANGE, by the method indicated below, addressed to the following:

Spencer J. Nissen	<input type="checkbox"/>	Via U.S. Mail
U.S. Environmental Protection Agency	<input type="checkbox"/>	Via Facsimile
Office of Administrative Law Judges	<input checked="" type="checkbox"/>	Via Overnight Mail
Mailcode 1900L	<input type="checkbox"/>	Via Hand Delivery
1200 Pennsylvania Avenue NW	<input type="checkbox"/>	Via Electronic Mail
Washington, D.C. 20460		

Carol Kennedy, Regional Hearing Clerk	<input type="checkbox"/>	Via U.S. Mail
U.S. Environmental Protection Agency	<input type="checkbox"/>	Via Facsimile
1200 Sixth Avenue	<input checked="" type="checkbox"/>	Via Overnight Mail
Mail Stop ORC-158	<input type="checkbox"/>	Via Hand Delivery
Seattle, WA 98101	<input type="checkbox"/>	Via Electronic Mail

Mark A. Ryan	<input checked="" type="checkbox"/>	Via U.S. Mail
Assistant Regional Counsel	<input type="checkbox"/>	Via Facsimile
U.S. Environmental Protection Agency	<input type="checkbox"/>	Via Overnight Mail
1435 N Orchard Street	<input type="checkbox"/>	Via Hand Delivery
Boise, ID 83706	<input type="checkbox"/>	Via Electronic Mail



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