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Attorneys for Elizabeth Ann and Nick Nettleton

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

IN RE SRBA

Case No. 39576

Subcase No. 61-04029

**AFFIDAVIT OF DAVE SHAW IN SUPPORT OF
MOTION TO SET ASIDE, REOPEN AND/OR
MOTION TO ALTER OR AMEND PARTIAL
DECREE FOR WATER RIGHT NO. 61-04029**

STATE OF IDAHO)
) ss.
County of Gem)

Dave Shaw being first duly sworn upon his oath, deposes and says that:

1. I am over the age of 18 and I make this Affidavit based upon my personal knowledge and I am competent to testify to the matters contained herein.
2. I am a licensed professional engineer and former principal in the natural resources consulting firm of ERO Resources Corporation ("ERO"). I have over forty (40) years of experience and expertise in water resources and management, covering a broad spectrum of disciplines including surface and ground water supply and use studies, water right evaluations, water quality evaluation and monitoring, project management, alternative dispute resolution, litigation support and expert witness testimony, and technical input on legislative and

COPY

administrative matters. My experience includes eleven (11) years acting as project manager for the Idaho Department of Water Resources (“IDWR”) role in the Snake River Basin Adjudication (“SRBA”) and I continue to assist clients with water right investigations including adjudication and administrative processing, evaluation and transfer, and the development of new rights and protection of senior rights.

3. I have been retained by Elizabeth Ann and Nick Nettleton to assist them with the preparation and processing of a Water Right Transfer Application (Transfer No. 81319) which proposes to add a point of diversion to Water Right No. 61-4029. As part of the filing and processing of the Transfer it was not known to myself or the Nettletons that there was a volume limitation with respect to the irrigation use under Water Right No. 61-4029. Instead, it was understood by myself and the Nettletons that any volume limitation was applicable only to the stockwater use under Water Right No. 61-4029.

4. The first time either myself or the Nettletons were made aware of that IDWR believed that the volume limitation was applicable to the entire water right was in April of 2018. Attached hereto as **Exhibit A** is a true and correct copy of the e-mail correspondence Justin Shearer with IDWR sent to the Nettletons on April 26, 2018, which was subsequently forwarded to me, as well as my response dated April 26, 2018.

5. As indicated in my responsive e-mail, I have reviewed the water right backfile and adjudication claim file for Water Right No. 61-4029. As part of my review I confirmed that the claim filed by the claimants for the water right (which were the predecessors in interest of the Nettletons) did not include a volume limit. Attached hereto as **Exhibit B** is a true and correct copy of the Notice of Claim for Water Right No. 61-4029. The first time a volume limit appears in the claim file is on a “Diversion amount Review Sheet” dated 9-16-1996 with Mel Shulte’s

signature and the volume limit is assigned appropriately only to the stockwater portion of the water right. The next time the volume limit appears is on the "Profile Report" dated 11/21/1998. Attached hereto as **Exhibit C** is a true and correct copy of the "Profile Report". This "Profile Report" is the day after the "Notice of Error" report which is dated November 20, 1998. Attached hereto as **Exhibit D** is a true and correct copy of the "Notice of Error" report.

6. As part of my review of the water right back file I also discovered that there was communication between IDWR staff concerning the inappropriate volume limitation on Water Right No. 61-4029. Attached hereto as **Exhibit E** is a true and correct copy of the internal e-mail correspondence between IDWR staff concerning the inappropriate volume limitation. As indicated in said e-mail correspondence IDWR staff was considering various options to correct the inappropriate volume limitation which ultimately lead to Justin Shearer's e-mail to the Nettletons suggesting the alternative that they approach the SRBA Court "and file a corrections claim to your partial decree to try and fight the decree and correct the respective volume amounts for the beneficial uses described on the water right." As indicated by Mr. Shearer if the volume limitation is applied to the entire right then the Nettletons would be left with "roughly 15 hours and 45 minutes of pumping" for an irrigation right of 235 acres. This volume limitation essentially renders the right meaningless.

7. The beneficial use for Water Right No. 61-4029 and the use subsequent to the partial decree has not been limited by the volume limitation now being raised by IDWR as part of the pending Transfer and thus correcting or clarifying that there is no volume limitation with respect to the irrigation use will not result in a change to the current status and use of the water right. Thus, there will be no prejudicial impact to any other water users as a result of the SRBA

Court correcting or clarifying Water Right No. 61-4029 to remove any question that the volume limitation does not apply to the irrigation portion of the water right.

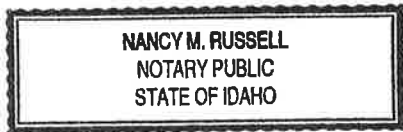
//

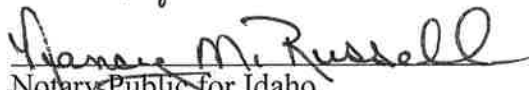
//



Dave Shaw

Sworn to and subscribed before me this 21 day of September, 2018.





Notary Public for Idaho
Residing in Emmett Idaho
My Commission Expires: 12-21-19

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of September, 2018, I caused a true and correct copy of the foregoing **AFFIDAVIT OF DAVE SHAW IN SUPPORT OF MOTION TO SET ASIDE, REOPEN AND/OR MOTION TO ALTER OR AMEND PARTIAL DECREE FOR WATER RIGHT NO. 61-04029** to be served by the method indicated below, and addressed to the following:

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

- ☒ U.S. Mail, Postage Prepaid
- ☐ Hand Delivered
- ☐ Overnight Mail
- ☐ Facsimile
- ☐ Email / CM/ECF

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
PO Box 44449
Boise, ID 83711-4449

- ☒ U.S. Mail, Postage Prepaid
- ☐ Hand Delivered
- ☐ Overnight Mail
- ☐ Facsimile
- ☐ Email / CM/ECF

The United States Department of Justice
Environment and Natural Resources Div.
550 West Fort Street, MSC 033
Boise, ID 83724

- ☒ U.S. Mail, Postage Prepaid
- ☐ Hand Delivered
- ☐ Overnight Mail
- ☐ Facsimile
- ☐ Email / CM/ECF


S. Bryce Farris

EXHIBIT A

Shearer, Justin

From: Dave Shaw <dshaw@erresources.com>
Sent: Thursday, April 26, 2018 2:58 PM
To: Shearer, Justin; nnettleton@juno.com
Subject: RE: Transfer to Add Diversion Points to Water Right 61-4029

Mr. Shearer:

Your email to the Nettletons was forwarded to me for response. A review of the adjudication claim file for 61-4029 shows the volume limit is clearly and IDWR clerical error. The volume limit did not appear on any claim filed by the claimants for this water right. The first time the volume limit appears in the file is on a "Diversion Amount Review Sheet" dated 9-16-1996 with Mel Schulte's signature. On this sheet the volume limit is appropriately assigned to the Stockwater portion of the water right. The next time it appears is on a "Profile Report" dated 11/21/1998, the day after the "Notice of Error" report is dated, and is not applied to the entire right instead of the Stockwater portion. This is clearly an internal error that does not appear to have been presented to the claimant during the error correction process.

It is not appropriate to now put the burden of this correction on the right owner. The Director has the authority to make this correction through the transfer process that is currently underway. Notice can be provided as part of the transfer that in addition to adding a point of diversion the transfer will correct an obvious clerical error that occurred during the SRBA.

I hope you find this response satisfactory, if you have questions please let me know.
Dave

David Shaw

ERO Resources Corporation

From: Shearer, Justin <Justin.Shearer@idwr.idaho.gov>
Sent: Thursday, April 26, 2018 10:35 AM
To: nnettleton@juno.com
Subject: Transfer to Add Diversion Points to Water Right 61-4029

Good Morning Elizabeth,

I am contacting you to inform you of the current status on your application for transfer to add a diversion point to Water Right 61-4029. First, let me begin by apologizing in the lengthy delay in processing your application. In March of last year it was discovered that the diversion volume limit that was calculated from the number of stock was applied to the total volume for the entire right. So you have a right with 500 cattle that irrigates 235 acres which is limited to a total diversion of 6.7 AFY. As a result, I submitted your application for transfer to the adjudication bureau for review. It was found that changes to the volume on 61-4029 isn't something that IDWR can pursue with the Water Adjudication Court at this time.

As a result, processing the proposed transfer will further solidify the volume through approval. Currently, as it stands your water right at the rate it was decreed for of 5.14 cfs, would fulfill the annual volume limit of 6.7 af in roughly 15 hours and 45 minutes of pumping. Processing the transfer would add a point of diversion to this limited water right. I am thus contacting you to present you with the current standing and information of your application so that you can advise on how you would like to proceed. The alternative to processing this transfer would be to approach the adjudication water court and file a corrections claim to your partial decree to try to fight the decree and correct the respective

*I spoke w/ D.S.
on 4/30/18
- He'll consult w/ N.N.
about approach SRBA,
but is ok w/ us processing
xpc. - Check w/ N.N.
/m*

volume amounts for the beneficial uses described on the water right. Please contact me at your earliest convenience to advise on how you would like to proceed.

Thanks and regards,

Justin Shearer
Idaho Department of Water Resources
Water Resource Agent
(208) 334-2190
justin.shearer@idwr.idaho.gov

EXHIBIT B

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO,
IN AND FOR THE COUNTY OF TWIN FALLS

IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM.

CIVIL CASE NUMBER: 39576

Ident. Number: A61-04029
Date Received: ~~11/02/1989~~ 12-5-89
Receipt No: W0006864
Received By: _____

RECEIVED
DEC 05 1989

**NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW**

Department of Water Resources
Western Regional Office

1. Name: WILLIAM H. WALKER 208-366-2235
Address: P.O. BOX 399
MTN. HOME, ID 83647

AND/OR

Name: MARGARET WALKER 208-366-2235
Address: P.O. BOX 399
MTN. HOME, ID 83647

2. Date of Priority: JAN 26, 1923

3. Source: RYEGRASS CREEK Trib. to: COLD SPRINGS CREEK

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4 of	Lot	County
03S	09E	32	NE	SW	SW		ELMORE
			SE	SW	SW		ELMORE
04S	09E	7	SW	SW	NE		ELMORE
		18	SE	SE	NW		ELMORE

5. Description of diverting works:
HEADGATES AND DITCHES

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or)	A.F.A.
IRRIGATION	03/15	11/15	6.000		
STOCKWATER	01/01	12/31	0.140		

7. Total Quantity Appropriated is:
6.140 C.F.S. (and/or) A.F.A.

8. Total consumptive use is 917.0 Acre Feet Per Annum.

9. Non-irrigation uses:
S/600 RANGE.

A61-04029

Page 1

Date: 11/02/89

MICROFILMED

AUG 11 1992

10. Place of Use:

Township	Range	Section	1/4	of	1/4	Lot	Use	Acres
04S	09E	7	SW		NE		IRR	25.0
			NE		SW		IRR	30.0
			SE		SW		IRR	20.0
			NW		SE		IRR	10.0
			SW		SE		IRR	20.0
			Section Acres					105.0
		18	NW		NE		IRR	16.0
			SW		NE		IRR	20.0
			NE		NW		IRR	35.0
			SE		NW		IRR	20.0
			NE		SW		IRR	20.0
			SE		SW		IRR	30.0
			NW		SE		IRR	10.0
			SW		SE		IRR	6.0
			Section Acres					157.0
			Total Acres					262.0

11. Place of use in counties: ELMORE

12. Do you own the property listed above as place of use? YES

13. Other Water Rights Used:

14. Remarks:

POINT OF DIVERSION IN S.32 IS ON/NEAR 10-ACRE TRACT LINE SO USED TWO LEGALS FOR THAT SINGLE POINT.
 STOCKWATER PLACE OF USE IS SAME AS IRRIGATION.
 6.00 CFS IRRIGATION FOR 262 ACRES INCLUDES DITCH LOSS, ESPECIALLY FROM S.32 P/D TO ACRES IN S. 7 & 18. THUS, IT MAY BE POSSIBLE TO ALLOW > 0.02 CFS/ACRE IF DITCH LOSS CAN BE QUANTIFIED (USE IDWR "LOSER" PROGRAM).
 THE P/D AND P/U CHANGES IN THIS CLAIM OCCURRED PRIOR TO 11/87 & SHOULD BE CONSIDERED A TRANSFER IN THE RIGHT.

15. Basis of Claim: STATUTORY CLAIM

16. Signature(s)

(a.) By signing below, I/We acknowledge that I/We have received, read and understand the form entitled "How you will receive notice in the Snake River Basin Adjudication." (b.) I/We do _____ do not ☒ wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments: 1

For Individuals:

I/We do solemnly swear or affirm that the statements contained in the foregoing document are true and correct.

Signature of Claimant(s): William H. Walker Date: 11-2-89
Margaret Walker Date: 11-2-89

State of Idaho)
County of Elmore) SS.

Subscribed and sworn (or affirmed) before me this 4th day
of Dec. 19 89
Jeanna L. Still
Notary Public

Seal

Residing at Mtn Home, Id
My Commission Expires 4-17-95

EXHIBIT C

AJ0749NP
No. R61-04029

IDAHO DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIM PROFILE REPORT
(REGIONAL)

DATE: 11/21/98
PAGE: 1

OWNER CODE	NAME & ADDRESS	PRIORITY DATE	WATER USE	USE PERIOD FROM TO	DIVERSION RATE	DIVERSION VOLUME
C	WILLIAM H WALKER	04/01/1927	IRRIGATION	03-15 11-15	5.02 CFS	
C	MARGARET WALKER		STOCKWATER	01-01 12-31	0.12 CFS	
	RT 1 BOX 458					
	GLENN'S FERRY ID 83623					
	(208) 366-2235					
			TOTAL DIVERSION:		5.14 CFS	6.70 AFA

Water Source: RYEGRASS CREEK Tributary to: COLD SPRINGS CREEK Stage: BENEFICIAL USE

Points) of Diversion: T03S R09E S32 SESMSU ELMORE County
T04S R09E S07 SWSME ELMORE County
S18 SESEMW ELMORE County

Place of use legal Description for: IRRIGATION

	NE	NW	SW	SE	SUM
T R S	NE NE	NE NE	NE NE	NE NE	
04S 09E 7	25	05			108.5
04S 09E 18	01	01	38	30	126.5
			27	16	
				27	
				09	
				08	
				04	
					235.0

Place of use location for STOCKWATER is the same location as described for: IRRIGATION
POU County: ELMORE

- Conditions of Approval:
- C05 - RIGHT INCLUDES ACCOMPLISHED CHANGE IN PLACE OF USE PURSUANT TO SECTION 42-1425, IDAHO CODE.
 - C03 - RIGHT INCLUDES ACCOMPLISHED CHANGE IN POINT OF DIVERSION PURSUANT TO SECTION 42-1425, IDAHO CODE.
 - M05 - THE QUANTITY OF WATER UNDER THIS RIGHT FOR STOCKWATER USE SHALL NOT EXCEED 13,000 GALLONS PER DAY.
 - M08 - THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT FOR STOCKWATER USE IS NOT A DETERMINATION OF HISTORICAL BENEFICIAL USE.

Remarks: EXP STOCKWATER, 500 RANGE CATTLE

Dates: Exam Made Date: 08/04/1994 Verified Date: Objection Filed Date:

Misc: Water District Number: 61E Field Inspection Flag: Presumption Flag:

AJ0749NP
No. R61-04029

IDAHO DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIM PROFILE REPORT
(REGIONAL)

DATE: 11/21/98
PAGE: 2

Comments: Date: 09/19/1996 User-ID: MSCULTE Subject: COPIED FROM REMARKS

STOCKWATER PLACE OF USE IS SAME AS IRRIGATION.
6.00 CFS IRRIGATION FOR 262 ACRES INCLUDES DITCH LOSS, ESPECIALLY
FROM S.32 P/D TO ACRES IN S. 7 & 18. THUS, IT MAY BE POSSIBLE TO
ALLOW > 0.02 CFS/ACRE IF DITCH LOSS CAN BE QUANTIFIED (USE IDWR
"LOSER" PROGRAM).
THE P/D AND P/U CHANGES IN THIS CLAIM OCCURRED PRIOR TO 11/87 &
SHOULD BE CONSIDERED A TRANSFER IN THE RIGHT.
ADDRESS CHANGE 12/4/1995 BY MTS

Date: 09/19/1996 User-ID: MSCULTE Subject: CONVEYANCE LOSS
THE DIVERSION RATE FOR IRRIGATION INCLUDES .32 CFS OF CONVEYANCE
LOSS.

Date: 11/21/1998 User-ID: JSKURTE Subject: ADDED NOS & NOS CONDITIONS
ADDED NOS & NOS CONDITIONS FOR STOCKWATER USE.

Audit: 11/21/98 JSKURTE

EXHIBIT D

November 20, 1998

**NOTICE OF ERROR
REPLY**

Please type or print clearly, fill out this form completely and mail.

Return this reply form to IDWR by the deadline date printed below if you want IDWR to change your recommendation or you want to let IDWR know that you agree with its recommendation.

YOUR DEADLINE FOR RETURNING A NOTICE OF ERROR REPLY IS: December 18, 1998

Water right number: 61-04029

WILLIAM H WALKER
MARGARET WALKER
RT 1 BOX 458
GLENN'S FERRY ID 83623

Daytime Telephone Number: *(208) 366-2235*
Evening Telephone Number:

1. Describe the portion of the proposed recommendation with which you disagree (e.g. priority date, period of use, source):

2. Describe the changes you wish to make in the proposed recommendation:

3. Give a brief explanation as to why you disagree with these portions:

☒ I AGREE with this proposed recommendation; no changes need to be made.

DATE: 12-10-98 SIGNATURE: *William H. Walker*

Please print your name: William H. Walker

EXHIBIT E

Shearer, Justin

From: Shearer, Justin
Sent: Thursday, April 26, 2018 10:35 AM
To: 'nnettleton@juno.com'
Subject: Transfer to Add Diversion Points to Water Right 61-4029

Good Morning Elizabeth,

I am contacting you to inform you of the current status on your application for transfer to add a diversion point to Water Right 61-4029. First, let me begin by apologizing in the lengthy delay in processing your application. In March of last year it was discovered that the diversion volume limit that was calculated from the number of stock was applied to the total volume for the entire right. So you have a right with 500 cattle that irrigates 235 acres which is limited to a total diversion of 6.7 AFY. As a result, I submitted your application for transfer to the adjudication bureau for review. It was found that changes to the volume on 61-4029 isn't something that IDWR can pursue with the Water Adjudication Court at this time.

As a result, processing the proposed transfer will further solidify the volume through approval. Currently, as it stands your water right at the rate it was decreed for of 5.14 cfs, would fulfill the annual volume limit of 6.7 af in roughly 15 hours and 45 minutes of pumping. Processing the transfer would add a point of diversion to this limited water right. I am thus contacting you to present you with the current standing and information of your application so that you can advise on how you would like to proceed. The alternative to processing this transfer would be to approach the adjudication water court and file a corrections claim to your partial decree to try to fight the decree and correct the respective volume amounts for the beneficial uses described on the water right. Please contact me at your earliest convenience to advise on how you would like to proceed.

Thanks and regards,

Justin Shearer
Idaho Department of Water Resources
Water Resource Agent
(208) 334-2190
justin.shearer@idwr.idaho.gov

Shearer, Justin

From: Saxton, Craig
Sent: Monday, January 29, 2018 2:01 PM
To: Shearer, Justin; Grimm, Angie
Cc: Courtney, Andrea; Fritschle, Carter
Subject: RE: Error Correction Request for WR 61-4029

Follow Up Flag: Follow up
Flag Status: Flagged

Hey Justin,

Carter, Andrea, and I met this morning to discuss the proposed error correction.

Unfortunately, correcting the volume on 61-4029 isn't an error that we (IDWR) can pursue correction for. At this point, the situation where we can submit an error correction is extremely limited. It is essentially going to be limited to mistakes the court makes or those types of errors where there was no way the claimant had any opportunity to catch it.

Why Not? As I understand it, it comes down to the finality of judgement. After the decree is issued, there is a 6 month period of time where a correction could be pursued depending on a particular set of circumstances. At this point the legal paths we might be able to take to pursue a correction are all but closed and have been. The only reason we have been able to make these types of error corrections in the past is because, quite frankly, no one argued with it. The essentially let them slide through.

Now, there is concern being expressed about how changing the degree at this state affects the finality of judgement. If we go back and can change a final unified decree then what is the point of the SRBA in the first place. We actually had to withdraw a request for correction of error last month.

Specifically looking at 61-4029, we see that regardless of IDWR's recommendation, the claimant had the opportunity to disagree (catch the error), in the notice of error process, during the regular objection period, and later when the decree was amended. I am extremely sympathetic to the number of possible reasons this could have been missed or overlooked by the claimant. However, it still leaves us stuck.

Ideas for Resolution:

I have notes that there was discussion of trying to fix this though the transfer and they didn't think it could be done. So we brainstormed a little bit:

From the Backfile, we know that the intent for the 7.6 AF was intended for stockwater. This is from page 64 in the "Claim File 61-4029" Backfile:

RECOMMENDATIONS:

REC. PURPOSE	* REC. PERIOD FROM TO	REC. DIV RATE CFS	REC. DIV VOL. AF/A	REC. CORR. USE
IRRIGATION	02-15 11-15	4.84		
STOCKWATER	01-01 12-31	0.140		
TOTAL FOR THIS RIGHT		6.140	4.96	

REVIEWED BY: *Mel Schults*

DATE: *9-16-96*

Stock: 500 cattle

$500 \times 12 \text{ gpd} \times 365 = 6.7 \text{ ofc}$
3.25850

* See attached ~~affidavits~~ affidavits and documents labeled 11a thru 11k. relating to historical season of use.

- Is there a way that this could be used to support the fact that the volume is not applicable to the irrigation use and make a case that the transfer is clarifying an ambiguity in the decree?
- Could the claimant drop the stockwater use and therefore drop the 6.7 AF volume limit?
- What if the argument was made that the 6.7 AF wasn't added incorrectly, it was rather left off of the quantity description for stock water. If the transfer clarified that the 6.7 AF was applicable to stock only, then perhaps, that would allow you to justify that there was no volume limit applicable to the irrigation portion.

QUANTITY: 5.14 CFS
6.70 APY

THE QUANTITY OF WATER UNDER THIS RIGHT FOR STOCKWATER USE SHALL NOT EXCEED 13,000 GALLONS PER DAY.

PRIORITY DATE: 04/01/1927

POINT OF DIVERSION: T03S R09E S32 SESWSN Within Elmore County
T04S R09E S07 SWSWNE
S18 SESENW

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	02-15 TO 11-15	5.02 CFS
	Stockwater	01-01 TO 12-31	0.12 CFS

I know this isn't ideal.

Let me know if we need to get together and talk about this some more.

Thanks,
c

From: Saxton, Craig

Sent: Wednesday, January 24, 2018 3:06 PM

To: Shearer, Justin <Justin.Shearer@idwr.idaho.gov>; Grimm, Angie <Angie.Grimm@idwr.idaho.gov>

Subject: RE: Error Correction Request for WR 61-4029

Well...no.

Knowing you are waiting on it, I will bring it up with legal staff again. But they have had some push back that has pretty much brought error corrections of this sort to a stand still. I will let you know what I find out.

Thanks,

c

From: Shearer, Justin

Sent: Wednesday, January 24, 2018 2:45 PM

To: Saxton, Craig <Craig.Saxton@idwr.idaho.gov>; Grimm, Angie <Angie.Grimm@idwr.idaho.gov>

Subject: RE: Error Correction Request for WR 61-4029

Thanks for the follow up Craig,

I am still sitting on the transfer as I had not heard anything back. Any timeline of when to expect the error correction request being "submitted" and processed?

Thanks again,

Justin Shearer

Idaho Department of Water Resources

Water Resource Agent

(208) 334-2190

justin.shearer@idwr.idaho.gov

From: Saxton, Craig

Sent: Wednesday, January 24, 2018 9:45 AM

To: Grimm, Angie <Angie.Grimm@idwr.idaho.gov>; Shearer, Justin <Justin.Shearer@idwr.idaho.gov>

Subject: FW: Error Correction Request for WR 61-4029

Justin and Angie,

In March last year you brought up the possible need for an error correction to 61-4029 due to a transfer you were processing. I wrote it up and passed it to legal for review.

I stumbled across this today and according to the court page, an error correction request has not been submitted.

Are you still sitting on the transfer?

Thanks,

c

From: Saxton, Craig

Sent: Wednesday, March 22, 2017 11:34 AM

To: Courtney, Andrea <Andrea.Courtney@idwr.idaho.gov>; Cooley-Denney, Suzy <Suzy.Cooley-

Denney@idwr.idaho.gov>

Cc: Grimm, Angie <Angie.Grimm@idwr.idaho.gov>; Shearer, Justin <Justin.Shearer@idwr.idaho.gov>

Subject: Error Correction Request for WR 61-4029

Andrea and Suzy,

Western region contacted me yesterday about 61-4029 which is included in a transfer application that they are trying to process. It was discovered that we included a diversion volume limit that was calculated from the number of stock, but applied to the entire right. So we have right with 500 cattle that irrigates 235 acres which is limited to a total diversion of 6.7 AFY.

The reality is that the stockwater use is de minimis and since the right is based on beneficial use, we shouldn't have included a volume for the stockwater use and simply just limited the stock use to 13k gpd. We did include the 13k gpd limit, but also had that 6.7 AFY limit. The source is surface water so there is not irrigation volume limit either.

Anyway, Carter and I talked it through and though the best way to handle it is to remove the 6.7 AFY limit completely if we can.

Attached is a Proposed Correction to the Partial Decree along with the **DRAFT** Error Correction Request (*meaning ... I expect someone will want to change/upgrade/clarify the request to a format more suitable for the court*).

Documentation can be found at <N:\Adjudication\SRBA>Error Corrections\2 - Ready\61-04029>

c

From: Shearer, Justin

Sent: Tuesday, March 21, 2017 12:33 PM

To: Saxton, Craig <Craig.Saxton@idwr.idaho.gov>

Cc: Grimm, Angie <Angie.Grimm@idwr.idaho.gov>

Subject: Transfer Review for WR 61-4029 and Decreed Volume Limitation Questions

Good Afternoon Craig,

I am currently in the process of reviewing a transfer for decreed WR 61-4029 and came across an issue that I would appreciate your insight on. It appears the decree issued a total volume of 6.7 afa, but I would think that the volume limitation should only be on the stockwater use considering adjudication policy was to recommend surface water irrigation without volume limitations. The 6.7 afa is the volume standard for up to 500 cattle claimed. Could you please take a look at this WR and offer your insight on this matter as to whether this is something we can fix in a transfer approval since it is a pretty significant change that ultimately increases the quantity rather than limiting it.

Angie and I would be happy to do conference call with you at your earliest convenience to discuss this matter. Please let me know when a good time for you would be.

Thanks and regards,

Justin Shearer

Idaho Department of Water Resources

Water Resource Agent

(208) 334-2190

justin.shearer@idwr.idaho.gov



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WATER RESOURCES
WESTERN REGION

November 18, 2016

Nick Miller
Western Region Manager
Idaho Department of Water Resources
2725 Airport Way
Boise, ID 83705-5082

RE: Application for Transfer of Water Right No. 61-4029 in the Name of Elizabeth Ann Nettleton

Dear Nick:

Enclosed is an application for transfer seeking to add a point of diversion on Ryegrass Creek for water right no. 61-4029. The new point of diversion is located at an old dam site but the diversion structure will be constructed in a manner that does not create a dam under IDWR's rules.

Please let me know if you have any questions or if I can provide you with any additional information. Thank you in advance.

Yours truly,

David Shaw

Enc.

cc: Elizabeth Nettleton w/o Enc.