

JAN 07 2019

DEPARTMENT OF
WATER RESOURCES

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**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. 61-4029

AFFIDAVIT OF CARTER FRITSCHLE

STATE OF IDAHO)
) ss.
County of Ada)

I, Carter Fritschle, being first duly sworn on oath, depose and state as follows:

1. I am the Manager of the Adjudication Section for the Idaho Department of Water Resources ("IDWR"). I have been in this position for 8 years, and have worked for IDWR for over 30 years. Previously I have acted as the manager for the technical support services division

of the Adjudication Bureau, a water rights supervisor, and a senior water resource agent.¹ Prior to the initiation of the Snake River Basin Adjudication ("SRBA"), I was a field examiner for IDWR.

2. In all of the adjudication positions I have held at IDWR, including my current position, my duties have included completing recommendations of water rights in the SRBA, Coeur d'Alene-Spokane River Basin Adjudication and private adjudications as well as objection resolution in contested subcases. In my current position, I am also responsible for reviewing the work of other IDWR Adjudication Section employees to help ensure consistency in the recommendations for water rights.

3. I have reviewed the *Amended Partial Decree*, SRBA Subcase No. 61-4029 (March 4, 2003); the *Motion to Set Aside, Reopen and/or Motion to Alter or Amend Partial Decree for Water Right No. 61-04029* (Oct. 1, 2018); the *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. 61-4029* (Oct. 1, 2018) ("*Shaw Affidavit*") filed by Elizabeth Ann and Nick Nettleton; and the *Adjudication Claim and Water Right Backfiles* for water right no. 61-4029 maintained at IDWR. The following is based upon my own personal knowledge and my review of the foregoing documents.

4. Based on my experience and review of the foregoing documents, it is my conclusion that the placement of the 6.7 afy limitation under the Quantity element in the *Amended Partial Decree* for water right no. 61-4029 is based on a data-entry error made by IDWR in the recommendation for water right no. 61-4029 and that the 6.7 afy limit should have been placed under the stockwater quantity description under the Purpose and Period of Use elements.

5. On the face of the Amended Partial Decree, the placement of the 6.7 afy limitation indicates that the volume limitation is applicable to both the irrigation and stockwater portion of the water right. The placement of the annual diversion volume limitation on the amended partial decree matches IDWR's recommendation in the *Director's Report* for water right no. 61-4029. In the SRBA, when a claim had more than one purpose of use, IDWR usually recommended a

¹ The Adjudication Bureau was reorganized into the Adjudication Section on March 16, 2010.

diversion rate or annual diversion volume that applied to only one purpose use in one of two ways. The first way was to include the limit in a condition under the Quantity element and expressly state to which use(s) the rate or volume is applied. For example, the recommendation and *Amended Partial Decree* for water right no. 61-4029 correctly indicated that “[t]he quantity of water for stockwater use shall not exceed 13,000 gallons per day” by placing that condition in the Quantity element of the recommendation for claim no. 61-4029. (Emphasis added). The second way was to include the diversion rate or volume limitation somewhere besides the Quantity element, where it would be clearly applicable to only one use. For example, the recommendation and *Amended Partial Decree* for water right no. 61-4029 correctly indicated in the Purpose and Period of Use element that the irrigation use is limited to 5.02 cfs and the stockwater use is limited to .12 cfs.

6. The current placement of the 6.7 afy limit under the Quantity element is in direct conflict with the other elements of the water right. The express period of use for irrigation is nine months with a diversion rate of 5.02 cfs. If the 6.7 afy limit applies to both purposes of use, then the period of use for irrigation would be reduced to less than one day at the 5.02 cfs diversion rate. This would render the period of use essentially moot. Additionally, the provided place of use for irrigation is 235 acres. Less than one day of irrigation would not be sufficient to irrigate 235 acres in Elmore County. An annual volume of 6.7 afy would reasonably provide for the irrigation of approximately 2 acres. Applying the 6.7 afy limitation to the irrigation portion of the water right would reduce the place of use to less than one percent (1%) of what is expressly specified.

7. The conclusion that the placement of the volume limitation is a data-entry error is also supported by the *Adjudication Backfile*. Documents in the *Adjudication Backfile* suggest that IDWR calculated the 6.7 afy limit based on the stockwater use under the right and intended to apply the annual diversion volume limit solely to that portion of water right no. 61-4029. See *Shaw Aff.*, Ex. E. Nothing in the *Adjudication Backfile* provided a basis for or even suggested that IDWR intended to recommend such a limited annual diversion volume to the irrigation portion of the water right.

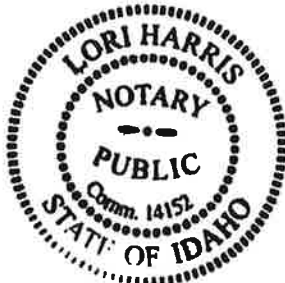
8. It is my conclusion that the placement of the 6.7 afy limitation under the Quantity element was an unintentional data-entry error made by IDWR in its recommendation for water right no. 61-4029. While not all errors in a partial decree could be considered clerical in nature or arise from oversight or omission, the placement of the annual volume limit in the recommendation for 61-4029 was such an error that arose merely from a mistake in data entry. The 6.7 afy limit should be have been placed to the right of the 0.12 cfs stockwater rate in the quantity column of the Purpose and Period of Use elements. It is that data-entry error that IDWR would recommend that the Court fix in this matter pursuant to the stipulation proposed by the parties. Correcting the placement of the volume limit is merely a mechanical fix which should not require further investigation by IDWR or relitigation of the matter.

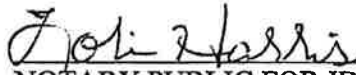
9. Attached hereto is a Corrected Director's Recommendation depicting the recommended correction to the volume limitation in the Partial Decree for water right no. 61-4029.

DATED this 3rd day of January, 2019.


CARTER FRITSCHLE
Manager, Adjudication Section
Idaho Department of Water Resources

SUBSCRIBED AND SWORN before me this 3rd day of January, 2019.




NOTARY PUBLIC FOR IDAHO
Residing at: Boise, Idaho
My commission expires: 12-12-2024

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4 day of January, 2019, I caused to be served a true and correct copy of the foregoing document by the methods indicated:

CLERK OF THE DISTRICT COURT SNAKE RIVER BASIN ADJUDICATION 253 THIRD AVENUE NORTH PO BOX 2707 TWIN FALLS, ID 83303-2707	☒ U.S. Mail, postage prepaid ☐ Hand Delivery ☐ Federal Express ☐ Facsimile: (208) 736-2121 ☐ Statehouse Mail
S. BRYCE FARRIS SAWTOOTH LAW OFFICES, PLLC 1101 W. RIVER STREET, SUITE 110 P.O. BOX 7985 BOISE, ID 83707	☒ U.S. Mail, postage prepaid ☐ Hand Delivery ☐ Federal Express ☐ Facsimile: ☐ Statehouse Mail
IDWR DOCUMENT DEPOSITORY STATEHOUSE MAIL PO BOX 83720 BOISE, ID 83720-0098	☐ U.S. Mail, postage prepaid ☐ Hand Delivery ☐ Federal Express ☐ Facsimile: ☒ Statehouse Mail
US DEPARTMENT OF JUSTICE ENVIRONMENT & NATL' RESOURCES 550 WEST FORT STREET, MSC 033 BOISE, ID 83724	☒ U.S. Mail, postage prepaid ☐ Hand Delivery ☐ Federal Express ☐ Facsimile: ☐ Statehouse Mail


SHANTEL M. CHAPPLE KNOWLTON
Deputy Attorney General

12/24/2018

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 61-4029

NAME AND ADDRESS: ELIZABETH ANN NETTLETON
18542 SE WILSON RD
GLENN'S FERRY ID 86323

SOURCE: RYEGRASS CREEK

TRIBUTARY: COLD SPRINGS CREEK

QUANTITY: 5.140 CFS
~~6.70 AFY~~

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 SESWSW Within ELMORE County
T04S R09E S7 SWSWNE Within ELMORE County
T04S R09E S18 SESENW Within ELMORE County

PURPOSE AND
PERIOD OF USE:

PURPOSE OF USE	PERIOD OF USE	QUANTITY
STOCKWATER	01/01 12/31	0.120 CFS <u>6.70 AFY</u>
IRRIGATION	02/15 11/15	5.020 CFS

PLACE OF USE: IRRIGATION in ELMORE County

T04S R09E S07	SWNE	25.00	T04S R09E S07	SENE	5.50
T04S R09E S07	NESW	27.00	T04S R09E S07	SESW	39.00
T04S R09E S07	NWSE	9.30	T04S R09E S07	SWSE	2.70
T04S R09E S18	NWNE	1.10	T04S R09E S18	SWNE	1.10
T04S R09E S18	NENW	38.00	T04S R09E S18	SENW	30.00
T04S R09E S18	NESW	16.00	T04S R09E S18	SESW	27.00
T04S R09E S18	NWSE	8.40	T04S R09E S18	SWSE	4.90

STOCKWATER same as IRRIGATION

235 ACRES TOTAL

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

The quantity of water decreed for this water right for stockwater use is not a determination of historical beneficial use.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use

Right includes accomplished change in place of use pursuant to Section 42-1425, Idaho Code.

Right includes accomplished change in point of diversion pursuant to Section 42-1425, Idaho Code.

Stockwater use is for 500 range cattle.