

From: [TJ Budge](#)
To: [Wendel, Jennifer](#); [Candice McHugh](#)
Cc: [Saxton, Craig](#)
Subject: RE: Water Rights Summary (Varela).xlsx
Date: Monday, September 14, 2020 3:11:45 PM
Attachments: [20200812 Declaration of Chris Varela.pdf](#)
[20200824 Benner Affidavit.pdf](#)
[20200829 Morman Affidavit.pdf](#)
[Summary-Varela Irrigated Areas-1R.pdf](#)
[Varela Irrigated Areas-1R.pdf](#)

Jennifer & Candice –

Attached are three affidavits related to the Chris Varela water rights—an affidavit from Chris and two affidavits from neighbors. The purpose of these affidavits is to show that the shared well did not entirely place the original hand-dug well, but rather served as a supplemental source of water. As mentioned before, the original well continued to be used on Chris’s property after the shared well was installed in 1981.

In an effort to resolve the protests that Chris and the Varela Family Trust filed in the CSRBA and avoid further conflict between them, the parties agreed that Chris would drill a new well on his property so that the parties no longer share a well. Chris did that this summer, at significant expense. We now need to get the water rights decreed consisting with current water use practices.

Water has been used for domestic purposes on Chris’s property since 1907, and on the Trust’s property since the shared well was drilled in 1981. The original 1907 right was not extinguished when the shared well was drilled. The original domestic use on Chris’s property continued on as it had historically, while a new use was developed for domestic purposes on the Trust property. In my view the shared well served as a second point of diversion for Chris’s property under the accomplished transfer statute. As such, both Chris and the Trust ought to receive a full domestic water right, with the POD of Chris’s right now being the new well, and the POD of the Trust’s right being the shared well. This can be accomplished by submitting SF-5s for Chris’s domestic right (95-17513) and the Trust’s domestic right (95-17765) as claimed, except that (i) the POU of Chris’ water right must exclude the Trust property, and (99) the POD of Chris’s right should be the new well.

Since the Chris Varela commercial water right (95-17793) originated before the shared well was drilled and continued to be supplied from the hand-dug well after the shared well was drilled, it should not contain a combined use limit. The Trust agrees with this, which is why the settlement agreement allows this right to be decreed as claimed, except that (i) the POD should be the new well, and (ii) a subordination condition should be added as stated in paragraph 2.3 of the settlement agreement.

Lastly, with respect to Chris’s irrigation right (95-4706), the settlement agreement provides that this right to be decreed as claimed, except that (i) the source shall be identified as “ground water,”) and (ii) the POD shall be the new well. Chris claimed 10 acres of irrigation for this water right. The Department recommended 3 acres. Chris has since provided the attached affidavits along with the map and calculation show 5.4 irrigated acres. Chris agrees that only 5.4 acres should be decreed for this right.

I hope the foregoing explanation makes sense. Let me know if you have any questions. If not, I would kindly ask that the Department prepare SF5s for the three Chris water rights (95-4706, 95-17793, 95-17513) and the Trust's water right (95-17765) as set forth above.

Thanks,

T.J. Budge

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From: Wendel, Jennifer <Jennifer.Wendel@idwr.idaho.gov>

Sent: Wednesday, August 26, 2020 8:26 AM

To: TJ Budge <tj@racineolson.com>; Candice McHugh <cmchugh@mchughbromley.com>

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

Subject: RE: Water Rights Summary (Varela).xlsx

Sounds good, thanks TJ.

Jennifer

From: TJ Budge [<mailto:tj@racineolson.com>]

Sent: Tuesday, August 25, 2020 10:18 PM

To: Wendel, Jennifer <Jennifer.Wendel@idwr.idaho.gov>; Candice McHugh <cmchugh@mchughbromley.com>

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

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To give you an update, I have an affidavit back from Chris and am waiting for an affidavit from the neighbor about the continued use of the hand-dug well after the shared well was drilled. As soon as I get the other affidavit I'll circulate them, then we can hopefully get SF5s prepared and filed with the court.

Thanks for your patience.

T.J. Budge

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From: Wendel, Jennifer <Jennifer.Wendel@idwr.idaho.gov>

Sent: Tuesday, July 28, 2020 5:13 PM

To: TJ Budge <tj@racineolson.com>; Candice McHugh <cmchugh@mchughbromley.com>

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

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TJ,

Had a chance to check in with Craig today about your questions from yesterday and clarified a few things.

95-4706

The Department recommended 3 acres of irrigation based on the evidence in the backfile. You said Chris thinks there is 6 acres of irrigation and will submit a map of the areas he irrigates to be confirmed by satellite imagery/ Google Earth. The Department will need more evidence beyond a map from Chris to show historical irrigation. I'm not sure if he was planning submitting additional documents/ photos/ affidavits...?

95-17513

If I understood you correctly yesterday, you wanted to remove the combined use limit of .03 cfs that's on 95-17513 and 95-17793. The Department essentially split the .06 cfs pump capacity of the shared well and gave half (.03 cfs) to the Trust and half to Chris. There are two ways to remove that combined use limit, the first is to put a combined use limit of .06 cfs on all of the rights coming from the well, including the Trusts' rights. The second way is to show that part of the water use for 17793 comes from the hand-dug shallow well. The Department did not have proof that the shallow well is producing water, has the infrastructure in place to pump water, and is currently (even if occasionally) pumping water. So maybe we can start with Chris providing some more information on the capabilities and use of that hand dug well?

95-17793

As described, need additional information on use and capabilities of hand dug well to remove combined use conditions.

Let me or Craig know if you have any questions.

Thanks,
Jennifer

Jennifer Wendel | Deputy Attorney General

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From: TJ Budge [<mailto:tj@racineolson.com>]

Sent: Monday, July 27, 2020 3:16 PM

To: Wendel, Jennifer <Jennifer.Wendel@idwr.idaho.gov>

Subject: Water Rights Summary (Varela).xlsx