

Matea McCray
3470 Cobblestone Ln.
Idaho Falls, ID 83404
Karon Huggins
2132N 2900 W
Arco, ID 83213

Subject: IN THE MATTER OF APPLICATION FOR TRANSFER NO. 83745 IN THE NAME OF SUNSET FARM & RANCH LLC: OBJECTION TO MOTION FOR SUMMARY JUDGMENT AND MEMORANDUM IN SUPPORT

To: BEFORE THE DEPARTMENT OF WATER RESOURCES OF THE STATE OF IDAHO

Per the following motion, "Sunset Farm & Ranch LLC ("Sunset"), by and through its undersigned counsel, hereby submits this Motion for Summary Judgment and Memorandum in Support. This is a dispositive motion, which must be filed on or before January 8, 2021. Notice of Hearing and Scheduling Order dated November 2, 2020", this is our objection.

In line with IDAPA 37.01.01.260 (as a "motion"), this is our objection. Please note that for some reason, I was not able to find IDAPA 37.01.01.565 (as a "prehearing motion") on the internet as referenced in Mr. Harris' original motion. Quoting Mr. Harris work, "This motion and associated memorandum concern the contested case pending before the Idaho Department of Water Resources ("IDWR" or "Department") on Sunset's transfer application, as amended ("T83745"). James Cefalo is the designated hearing officer (the "Hearing Officer")."

I. ARGUMENT

A. Response to, "The original basis for Huggins' protest is fully addressed with a subordination provision that has already been stipulated to by Sunset."

The original basis for Huggins protest was water in the river, not in the Arco canal. Once Sunset modified their Transfer request, I then responded with a hand carried protest within the timeframe requested to Mr. Cefalo. I also wrote a check to IDWR for that modified protest which was refused by IDWR since it was a modification to the original protest just as Sunset's transfer request was a modification to the original transfer request with nothing remaining from the original filing. Subordination is only applicable to water in the river, not in the Arco canal. Sunset has already significantly expanded the number of acres being watered on the subject property from what it was under Mr Quist's ownership and it is obvious to me that they expect to expand more.

B. Response to, " As a matter of law, the approval of T83745 will not violate the constitutional preference provisions found in Article XV, Section 3, of the Idaho Constitution."

The river is already empty, almost year round. The exception these days is when we are in flood conditions. Domestic wells are priority 1 in the state of Idaho. This transfer from the river to a canal/piping system further magnifies an empty river with no recharge to the ground water table level. If any of these surface water rights that Sunset plans to transfer went with a supplemental ground water right, this results in an expansion using a supplemental right as a primary right, thus allowing for a doubling of the acres and water used to irrigate those acres. Idaho water law is subordinate to the US

Constitution and the State of Idaho's Constitution has to be within the US constitution. Allowing dual use of water goes against the concept of Conjunctive Management rules set for by IDWR.

C: As referenced in Sunset's Subject Motion: "The water resource itself is owned by the State of Idaho: "All of the waters of the state, when flowing in their natural channels, including the waters of all natural springs and lakes within the boundaries of the state are declared to be the property of the state, . . . Idaho Code § 42-101." We agree that IDWR is the responsible agency to ensure water actions favorable to one party do not adversely impact other party. In this case, the other party is everyone downstream the point of the empty river whose groundwater table is impacted to the point that they must deepen their domestic water supply. This results in many individuals subsidizing agricultural irrigators at the expense of their home faucets. I would like to direct IDWR to Senator Crapo's recent questioning of Amy Coney Barrett where he specifically asks who is responsible for damages in water decisions, the state agency or the court. I believe it is located here:

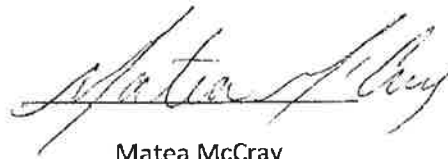
<https://www.youtube.com/watch?v=BJJ5xdCNL70> and/or here

https://www.youtube.com/watch?v=wH8J477_L28. This is why I believe that it is the responsibility of IDWR to prescreen all irrigation requests up front to ensure that approving that action would not result in damages to others domestic and irrigation. The City of Arco has deepened their water well several times over the past 40 years. This is funded by property taxes. It is not reasonable for IDWR to assume that individual citizens should pay \$300-\$400 per hour to hire water lawyers to stop harm from emptying natural waterways as far as depleting the groundwater table. In most cases, the average citizen is not even aware of IDWR or water rights... they just want their faucets to work.

D. In reference to the following statement: "Similarly, Huggins' argument for rights of river front property owners is unavailing. Huggins is advocating for a riparian system of water allocation." My parents purchased their land in the early 1970's and they purchased river front property. As far as I can remember, the river was never dry until after the adjudication process took place. The state of Idaho may write water law so that they do not believe that they cannot do a taking by displacing every drop of water in a river, but the United States Constitution states otherwise and Idaho law must be equal or more conservative than US law. An empty river year round is definitely a "taking" especially when "short water supplies" are the direct result of over appropriation of irrigation water in a water basin. Additionally, the burden of proof should be on an applicant that a change to water will not damage others when they file an IDWR should verify that before publishing a notice in a paper.

E. The original purpose of the State of Idaho Adjudication Court was to allow a farmer/rancher to walk in and represent themselves in court to make or prevent a change in a water right. I do not know if this is still the case, but it should be because \$300 to \$400/hr is a huge amount of money to prevent harm to one's property and I am sure the water court was not set up to enrich wealthy people and their lawyers by making it impossible through financial hardship for the average citizen to defend themselves.

Respectfully submitted Dec. 9, 2020.



Matea McCray
Representative for Karon Huggins

Cefalo, James

From: Matea McCray <mateamccray@gmail.com>
Sent: Wednesday, December 9, 2020 5:36 PM
To: Rob Harris; Cefalo, James; Karon Huggins; telfordsunvalleyseed@gmail.com
Subject: Objection to Motion for Summary Judgment and Memorandum in Support (Sunset Farm & Ranch LLC Transfer No. 83745)
Attachments: Sunset motion to dismiss and Summary.pdf

All:

Please see attached objection to Motion for Summary Judgment and Memorandum in Support filed in Transfer No 83745. James, please let me know if this also is to go to Harvey and Art and I will forward it.

Matea McCray