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WATER RESOURCES
WESTERN REGION

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF TRANSFER NO.
81459

AFFIDAVIT OF ERNEST CARLSEN

IN THE NAME OF TRAIL FAMILY
FARMS, LLLP

IN THE MATTER OF EXCHANGE NO.
81775

IN THE NAME OF TRAIL FAMILY
FARMS, LLLP

STATE OF IDAHO)
) ss:
COUNTY OF BONNEVILLE)

I, **Ernest Carlsen**, affirm as follows:

1. I am a citizen of the State of Idaho over the age of 21, residing at 4838 Wind River Dr.,
Idaho Falls, ID.

2. I worked at the Idaho Department of Water Resources Eastern Region Office in Idaho Falls for 33 years and during that time was the Water Rights Supervisor for region activities in the Snake River Basin Adjudication (SRBA) conducting investigations and preparing Director's Reports for consideration by the SRBA District Court. In this position I also supervised 5 staff members assigned to the SRBA that also conducted investigations and prepared Director's Reports for the court. Additionally I participated in resolution of objections filed by claimants. In 2008, I was promoted to Water Resource Program Manager, with responsibility for overseeing the processing of new permit and transfer applications filed with the region office and conducting preliminary hearings on protested applications while continuing to provide oversight of region activities in the SRBA.
3. I am familiar with the current IDWR rules, memos and practices as they pertain to the recommendations, conditions and limitations of water rights. I am currently employed by Idaho Water Engineering as East Idaho Manager.
4. I have reviewed and evaluated hundreds of cases where claimants and applicants filed multiple claims or applications because two or more sources of water were diverted from different points of diversion and used for irrigation on the same property, or where two or more sources were diverted from a single point of diversion with limited capacity, necessitating a condition specifying a combined use limit. In the case of the latter, the combined use limit specifies the maximum rate of diversion when two or more sources are comingled and simultaneously diverted or when only one source of water is in priority and available for diversion. The combined use limit on decrees 61-2000A, 61-12189, 61-12190,

61-7236A and 61-7236B indicates the diversion had limited capacity when these water rights were developed. Contrary, however, to the argument in the Motion for Summary Judgement, filed by the Protestants, the combined use limit does not foreclose the possibility of diverting waste water under 61-7236A and 61-7236B. As the facts will show, Little Canyon Creek is an ephemeral stream that is subject to declining flows and drying up in the latter part of the irrigation season. When the natural flow ceases to reach the Applicant's point of diversion on Little Canyon Creek then decrees 61-7236A and 61-7236B with a source of waste water can be diverted up to 1.0 cfs, their combined total.

5. Adding a point of diversion to water rights is a common practice at IDWR and does not automatically create an enlargement. During my tenure with IDWR, I assisted hundreds of water users with preparing transfer applications and know from experience that applications seeking to add a point of diversion are a common occurrence. Hence, on IDWR's form titled Application for Transfer of Water Right – Point(s) of Diversion, adding a point of diversion is one of the reasons listed for why a transfer application can be filed. In my last position with IDWR, I conducted the final region review proposing appropriate conditions that complied with the statutory requirements in Idaho Code 42-222(1). By statute, enlargement of a water right is one of the criteria IDWR must evaluate. The addition of a point of diversion does not automatically constitute an enlargement in use. When there is potential for an enlargement, conditions are normally included to prevent an enlargement from occurring.
6. In the case of the above captioned matter, the Applicant is proposing an additional or alternative point of diversion to utilize a more efficient system for collection and delivery of

waste water to the decreed place of use. Applying the conditions specified in the decrees will address issue of enlargement for the rate of diversion and enlargement in the place of use isn't an issue because there is no change in place of use for either decree proposed by the Application.

FURTHER YOU AFFIANT SAYETH NAUGHT.

DATED this 15th day of June, 2018.

Ernest Carlson
ERNEST CARLSEN

SUBSCRIBED AND AFFIRMED to before me this 15 day of June, 2018.



Melanie Ashton
Notary Public in and for the State of Idaho
Residing at: Idaho Falls
My Commission Expires: 10/28/2019

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served on the following on this 18th day of June, 2018, by the following method:

Idaho Department of Water
Resources – Western Region
2735 Airport Way
Boise, ID 8370

☐ U. S. Mail, postage pre-paid
☒ Hand Delivered
☐ Overnight Mail
☐ Facsimile
☐ E-mail

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Candace Muffly