

**STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES**

**TRANSFER OF WATER RIGHT
TRANSFER NO. 81319**

This is to certify that: ELIZABETH ANN NETTLETON
18542 SE WILSON RD
GLENN'S FERRY, ID 83623-5031

has requested a change to the water right(s) listed below. This change in water right(s) is authorized pursuant to the provisions of Section 42-222, Idaho Code. A summary of the changes is also listed below. The authorized change for each affected water right, including conditions of approval, is shown on the following pages of this document.

Summary of Water Rights Before the Proposed Changes

<u>Water Right</u>	<u>Origin/Basis</u>	<u>Priority Date</u>	<u>Diversion Rate</u>	<u>Diversion Volume</u>	<u>Acre Limit</u>	<u>Total Acres</u>	<u>Source</u>
61-4029	WR	4/1/1927	5.140 cfs	N/A	N/A	235.0	RYEGRASS CREEK

Purpose of Transfer (Changes Proposed)

<u>Current Number</u>	<u>Split</u>	<u>POD</u>	<u>POU</u>	<u>Add POD</u>	<u>Period of Use</u>	<u>Nature of Use</u>
61-4029	NO	NO	NO	YES	NO	NO

Summary Of Water Rights After the Approved Change

<u>Existing Right</u>	<u>New No. (Changed Portion)</u>	<u>Transfer Rate</u>	<u>Transfer Volume</u>	<u>Acre Limit</u>	<u>Total Acres</u>	<u>New No. (remaining portion)</u>	<u>Remaining Rate</u>	<u>Remaining Volume</u>	<u>Remaining Acre Limit</u>	<u>Remaining Total Acres</u>
61-4029	61-4029	5.140 cfs	N/A	N/A	235.0	N/A	N/A	N/A	N/A	N/A
COMBINED TOTALS		5.140 cfs	N/A	N/A	235.0		N/A	N/A	N/A	N/A

This water right(s) is subject to all prior water rights and shall be administered in accordance with Idaho law and applicable rules of the Department of Water Resources. Detailed Water Right Description(s) attached.

Dated this 11th day of September, 2019.



for Chief, Water Allocation Bureau

WATER RIGHT NO. 61-4029**As Modified by Transfer No. 81319**

In accordance with the approval of Transfer No. 81319, Water Right No. 61-4029 is now described as follows:

Right Holder: ELIZABETH ANN NETTLETON
18542 SE WILSON RD
GLENNS FERRY, ID 83623-5031

Priority Date: 4/1/1927

Source: RYEGRASS CREEK

Tributary: COLD SPRINGS CREEK

BENEFICIAL USE

IRRIGATION
STOCKWATER

From

02/15
01/01

to 11/15
to 12/31

To**Diversion Rate**

5.020 cfs
0.120 cfs
5.140 cfs

Diversion Volume

6.7 af

LOCATION OF POINT(S) OF DIVERSION

RYEGRASS CREEK	L4 (SWSW)	Sec 32 Twp 03S Rge 09E	ELMORE County
RYEGRASS CREEK	SENE	Sec 18 Twp 04S Rge 09E	ELMORE County
RYEGRASS CREEK	SENE	Sec 7 Twp 04S Rge 09E	ELMORE County
RYEGRASS CREEK	SWNE	Sec 7 Twp 04S Rge 09E	ELMORE County

PLACE OF USE: IRRIGATION

			NE				NW				SW				SE				Totals
Twp	Rng	Sec	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
04S	09E	7			25.0	5.5					27.0			39.0		9.3	2.7		108.5
04S	09E	18		1.1	1.1		38.0			30.0	16.0			27.0		8.4	4.9		126.5

POU Total Acres: 235.0

PLACE OF USE: STOCKWATER

			NE				NW				SW				SE				Totals
Twp	Rng	Sec	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
04S	09E	7			X	X					X			X		X	X		
04S	09E	18		X	X		X			X	X			X		X	X		

CONDITIONS OF APPROVAL

1. This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 4.0 afa per acre at the field headgate for irrigation of the place of use.
2. The right holder shall maintain a measuring device and lockable controlling works of a type approved by the Department in a manner that will provide the watermaster suitable control of the diversion(s).

Transfer No. 81319

WATER RIGHT NO. 61-4029
As Modified by Transfer No. 81319

CONDITIONS OF APPROVAL

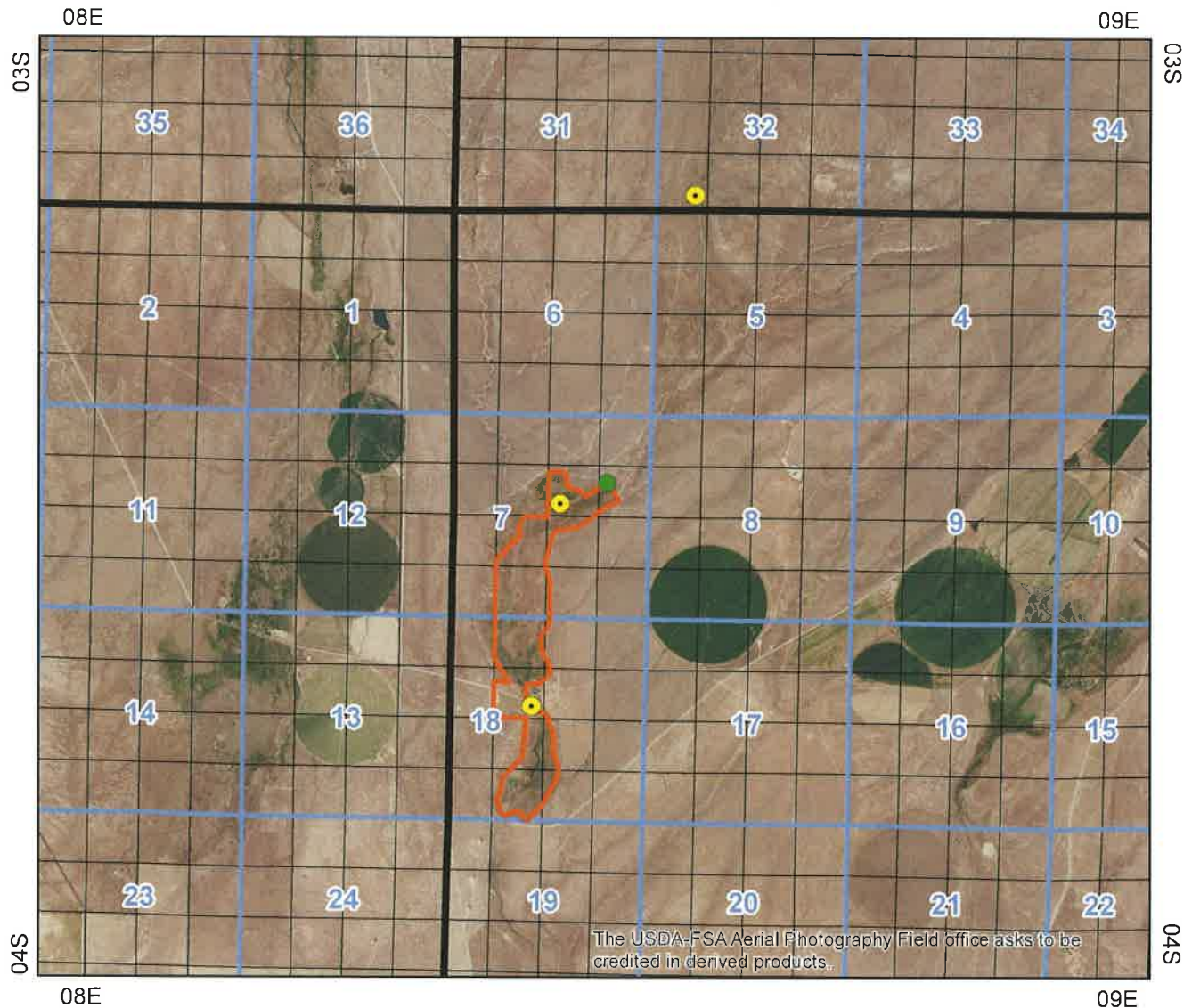
3. Use of water under this right may be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 61E.
4. The quantity of water under this right for stockwater use shall not exceed 13,000 gallons per day.
5. The quantity of water decreed for this water right for stockwater use is not a determination of historical beneficial use.
6. The right holder shall accomplish the change authorized by this transfer within one year of the date of this approval.
7. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
8. Pursuant to Section 42-1412(6), Idaho Code, this water right is subject to such general provisions necessary for the definition of the rights or for the efficient administration of water rights as determined by the Snake River Basin Adjudication court in the final unified decree entered 08/26/2014.

State of Idaho
Department of Water Resources

Attachment to Water Right Transfer

No. 81319

This map depicts the IRRIGATION & STOCKWATER place of use boundary for this water right at the time of this approval and is attached to the approval document solely for illustrative purposes.



-  Townships
-  PLS Sections
-  Quarter Quarters
-  Irrigation & Stockwater Place of Use
-  Existing Points of Diversion
-  Transfer Point of Diversion

0 0.5 1 2 Miles





State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region • 2735 Airport Way • Boise, Idaho 83705-5082

Phone: (208) 334-2190 • Fax: (208) 334-2348 • Website: www.idwr.idaho.gov

BRAD LITTLE
Governor

GARY SPACKMAN
Director

September 11, 2019

ELIZABETH ANN NETTLETON
18542 SE WILSON RD
GLENN'S FERRY ID 83623-5031

Re: Transfer No.: 81319 & 83023

Transfer Approval Notice

Dear Water Right Holder and other Interested Persons:

The Department of Water Resources has issued the enclosed approved Transfer of Water Rights. Please be sure to thoroughly review the conditions of approval and remarks listed on the approval document.

The Transfer of Water Rights is a PRELIMINARY ORDER issued by the Department pursuant to section 67-5243, Idaho Code. It can and will become a final order without further action by the Department unless the APPLICANT petitions for reconsideration or files an exception and/or brief within fourteen (14) days of the service date as described in the enclosed information sheet.

ANY PERSON aggrieved by any decision, determination, order or action of the Department and who has not previously been afforded an opportunity for a hearing on the matter may request a hearing pursuant to section 42-1701A(3), Idaho Code. A written petition contesting the action of the Department and requesting a hearing shall be filed within fifteen (15) days after receipt of the denial or conditional approval.

If the transfer approval includes a condition requiring measuring and recording devices, such devices shall comply with specifications established by the Department. Detailed specifications are available on the Department's home page on the Internet, or you can request a copy by contacting any office of the Department. Please be sure to thoroughly review the specifications to avoid unnecessary costs for reinstallation or modification due to non-conforming or improperly installed devices.

Please note that water right owners are required to report any change of water right ownership and/or mailing address to the Department within 120 days of the change. Failure to report these changes could result in a \$100 late filing fee. Contact any office of the Department or visit the Department's homepage on the Internet to obtain the proper forms and instructions.

If you have any questions, please contact me at (208) 334-2190

Sincerely,


Anna Kaizer

 Nick Miller
Regional Manager

Enclosure

CC:
ERO RESOURCES CORP
C/O DAVID SHAW
4001 E MAIN ST
EMMETT ID 83617

CERTIFICATE OF SERVICE

I hereby certify that on September 11, 2019 I mailed a true and correct copy, postage prepaid, of the foregoing PRELIMINARY ORDER (Approved Transfer) to the person(s) listed below:

Re: Transfer No.: 83139 & 83023

ELIZABETH ANN NETTLETON
18542 SE WILSON RD
GLENN'S FERRY ID 83623

ERO RESOURCES CORP
C/O DAVID SHAW
4001 E MAIN ST
EMMETT ID 83617



Anna Kaiser
Administrative Assistant

EXPLANATORY INFORMATION TO ACCOMPANY A PRELIMINARY ORDER

(To be used in connection with actions when a hearing was **not** held)

(Required by Rule of Procedure 730.02)

The accompanying order or approved document is a "Preliminary Order" issued by the department pursuant to section 67-5243, Idaho Code. **It can and will become a final order without further action of the Department of Water Resources ("department") unless a party petitions for reconsideration, files an exception and brief, or requests a hearing as further described below:**

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a preliminary order with the department within fourteen (14) days of the service date of this order. **Note: the petition must be received by the department within this fourteen (14) day period.** The department will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Section 67-5243(3) Idaho Code.

EXCEPTIONS AND BRIEFS

Within fourteen (14) days after: (a) the service date of a preliminary order, (b) the service date of a denial of a petition for reconsideration from this preliminary order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this preliminary order, any party may in writing support or take exceptions to any part of a preliminary order and may file briefs in support of the party's position on any issue in the proceeding with the Director. Otherwise, this preliminary order will become a final order of the agency.

REQUEST FOR HEARING

Unless a right to a hearing before the Department or the Water Resource Board is otherwise provided by statute, any person aggrieved by any final decision, determination, order or action of the Director of the Department and who has not previously been afforded an opportunity for a hearing on the matter may request a hearing pursuant to section 42-1701A(3), Idaho Code. A written petition contesting the action of the Director and requesting a hearing shall be filed within fifteen (15) days after receipt of the denial or conditional approval.

ORAL ARGUMENT

If the Director grants a petition to review the preliminary order, the Director shall allow all parties an opportunity to file briefs in support of or taking exceptions to the preliminary order and may schedule oral argument in the matter before issuing a final order. If oral arguments are to be heard, the Director will within a reasonable time period notify each party of the place, date and hour for the argument of the case. Unless the Director orders otherwise, all oral arguments will be heard in Boise, Idaho.

CERTIFICATE OF SERVICE

All exceptions, briefs, requests for oral argument and any other matters filed with the Director in connection with the preliminary order shall be served on all other parties to the proceedings in accordance with IDAPA Rules 37.01.01302 and 37.01.01303 (Rules of Procedure 302 and 303).

FINAL ORDER

The Director will issue a final order within fifty-six (56) days of receipt of the written briefs, oral argument or response to briefs, whichever is later, unless waived by the parties or for good cause shown. The Director may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. The department will serve a copy of the final order on all parties of record.

Section 67-5246(5), Idaho Code, provides as follows:

Unless a different date is stated in a final order, the order is effective fourteen (14) days after its service date if a party has not filed a petition for reconsideration. If a party has filed a petition for reconsideration with the agency head, the final order becomes effective when:

- (a) The petition for reconsideration is disposed of; or
- (b) The petition is deemed denied because the agency head did not dispose of the petition within twenty-one (21) days.

APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, if this preliminary order becomes final, any party aggrieved by the final order or orders previously issued in this case may appeal the final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which:

- i. A hearing was held,
- ii. The final agency action was taken,
- iii. The party seeking review of the order resides, or
- iv. The real property or personal property that was the subject of the agency action is located.

The appeal must be filed within twenty-eight (28) days of this preliminary order becoming final. See section 67-5273, Idaho Code. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.

MEMORANDUM

Date: September 18, 2018
To: Transfer 81319
From: Justin Shearer
Re: Watermaster Recommendation

Richard Neal, Watermaster of 61E was sought for comment. He initially returned the watermaster recommendation form stating that Rye Grass Creek isn't a tributary of Cold Springs Creek and that WR 61-4029 is in a separate drainage (61C). Following up with Mr. Neal via phone call, I informed him that Ryegrass Creek is in fact a tributary to Cold Springs Creek and is within his district (61E). He acknowledged this, and then informed me that he does not oppose the approval of this application. He also informed me that he has just recently left the area and is no longer acting watermaster, and a new acting watermaster has not yet been appointed. IDWR records show that he is still acting watermaster for 61E through spring of 2019 and no new documents to show a new watermaster appointed.

MEMORANDUM

TO: Transfer No. 81319

FROM: Justin Shearer

DATE: 8/22/19

RE: Evaluation of Application

Summary of Information Submitted

Narrative: Transfer No. 81319 proposes to add a point of diversion for existing water right 61-4029. The site of the new diversion is proposed approximately 400 meters northeast of one of the existing points of diversion and will be situated on Ryegrass Creek, tributary to Cold Springs Creek near an old dam site; the proposed diversion structure will be constructed in a manner that does not create a dam under IDWR's rules.

Authority to File: The application was filed in the name of Elizabeth Ann Nettleton. This matches current ownership of water right 61-4029. County tax lot data indicates Mrs. Nettleton owns the property where the proposed diversion is to be located. The place of use (POU) for water right 61-4029 is not changing under this proposed transfer, thus there is no evidence to suggest that Mrs. Nettleton does not have full authority to file this transfer.

Water Right Validity:

Water right 61-4029 was initially decreed in 2000, then an amended partial decree was issued in 2003. The 2003 amended partial decree included a total volume limit of 6.7 acre feet for the right. The limited volume on the 2003 decree was apparently an error that was corrected by the SRBA court by an amended partial decree issued on January 15, 2019. The right is presumed to be valid.

Overlap Analysis: No POU overlap is found. There is one other right nearby, however because the existing POU will not be changing there is no concern for POU overlap being created through this transfer. No POD overlap is found. The new additional point of diversion will be situated on Ryegrass Creek near an old dam site, however said dam site is no longer an existing POD.

Injury to Other Water Rights: None anticipated. The proposed new point of diversion is located between two of the existing points of diversion for this right and no other water rights divert from the creek between the existing points of diversion and the proposed point of diversion. The new point of diversion proposal is sourced off the Ryegrass Creek which does not have minimum streamflow requirements. Additionally, there is one nearby right sourced from a spring that is tributary to the Ryegrass Creek. Upon speaking with applicant's representative David Shaw, it was clarified that the purpose of this transfer is to reestablish a diversion point that historically was in place and used under this water right prior to being decreed during the adjudication process. Moreover, because the additional point of diversion will not be changing the amount of water sought by this right, there is no evidence to suggest that any injury to other rights will occur as a result of this transfer. WR is within WD 61E, comment letter was sent to the watermaster during advertising. The watermaster did not oppose approval of the transfer.

Enlargement of Use: Water right 61-4029 authorizes 5.020 CFS for the irrigation of 235 acres and 0.120 CFS for stockwater use on the same acreage. Based on the recommended diversion rates 6.7AF is allowed for stockwater. The 5.020 CFS for irrigation was decreed slightly above the 0.02cfs/acre to account for conveyance losses. Because irrigation is from surface water no volume is described.. Season of use will remain 2/15-11/15 as it was decreed per department transfer standards. Despite the proposed transfer adding an additional point of diversion, and potential to theoretically divert more water, the applicant is not proposing to use more water and their consumption of water will still be limited by the amounts described by their right. Thus, there is no concern that an enlargement of use will ensue as a result of this transfer.

Local Public Interest: The transfer application proposes beneficial use consistent with local public interest.

Beneficial Use/Conservation of Water Resources: The application proposes beneficial use consistent with conservation of water resources in Idaho.

The application is consistent with criteria of I. C. § 42-222 and should be processed.

Discussion

After evaluation of the diversion rate of 5.020 cfs for this right for irrigation use in respect to condition R64, it was determined that despite the decreed/licensed rate being greater than 0.02 cfs per acre as detailed in condition 64, the condition should still be added because the 0.02 cfs refers to the amount permissible at the headgate, and the 5.020 cfs diversion rate was decreed to account for conveyance losses and should remain as such. The transfer application was filed before the 2019 amended partial decree was issued, however the transfer was performed on the water right based on the 2019 amended partial decree.

RECEIVED

AUG 24 2018

WATER RESOURCES
WESTERN REGION

INC
1989 S 1875 E
GOODING, ID 83330
Point of Diversion SENE S2 T01S R10E
ELMORE County Source GROUND WATER
Tributary BOISE RIVER
Use: STOCKWATER 01/01 to 12/31 0.04
CFS
Total Diversion: 0.04 CFS

Date Filed: 7/13/2018
Place of Use: STOCKWATER
T01S R10E S1 L4(NWNW)
T01S R10E S2 L1(NENE) SENE
Water bearing zone to be appropriated is from
214 to 400 feet.

**NOTICE OF PROPOSED CHANGE OF
WATER RIGHT
TRANSFER NO. 81319**

ELIZABETH ANN NETTLETON,
18542 SE WILSON RD, GLENNS FERRY,
ID 86323; has filed Application No. 81319
for changes to the following water rights
within ELMORE County(s): Right No(s).
61-4029. The purpose of the transfer is to add
a new Point of Diversion to Water Right 61-
4029 on Ryegrass Creek, Tributary to Cold
Springs Creek approximately 1.3 miles NE of
the W Wilson Rd and Ryegrass Rd intersec-
tion in Glenns Ferry. Water will be used at the
current place of use near the same described
intersection to the NE and SE along Ryegrass
Creek.

Permits will be subject to all prior water
rights. For additional information concerning
the property location, contact Western Region
office at 208-334-2190; or for a full description
of the right(s) or proposed transfer (s) please
see www.idwr.idaho.gov. Protests may be sub-
mitted based on the criteria of Idaho Code §§
42-203A and 42-222. Any protest against the
approval of the application(s) must be filed
with the Director, Dept. of Water Resources,
Western Region, 2735 Airport Way, Boise, ID
83705 together with a protest fee of \$25.00 for
each application on or before 9/4/2018. The
protestant must also send a copy of the protest

The following applications have been filed to
appropriate the public waters of the State of
Idaho:

51-13130 *YOK RN 915116*
FAULKNER LAND & LIVESTOCK CO
INC
1989 S 1875 E
GOODING, ID 83330
Point of Diversion SWNE S7 T07S R12E
ELMORE County Source GROUND WATER
Use: STOCKWATER 01/01 to 12/31 0.04
CFS
Total Diversion: 0.04 CFS

Date Filed: 7/13/2018
Place of Use: STOCKWATER
T07S R11E S1 SESE
T07S R12E S7 NENE SWNE L1(NENW)
L3(NESW)

63-34568 *YOK RN 915118*
FAULKNER LAND & LIVESTOCK CO

AFFIDAVIT OF PUBLICATION

to the applicant.

GARY SPACKMAN, Director

First Publication: August 15, 2018

Second Publication: August 22, 2018

I, **Nicole James** do solemnly swear that I am the Legal
Clerk of the:

Mountain Home News

A weekly newspaper of general circulation, published once
a week, in Mountain Home, Idaho, that the notice attached
hereto which is a part of publication thereof; was
published in said newspaper for 2 consecutive
weeks, the first publication having been made on the
5th day of Aug, 2018, and the last publication
having been made on the 22nd day of Aug, 2018;
every Wednesday issue of the paper during the period and
time of publication and that the notice was published in
the paper proper and not in a supplement thereof.

And I further swear that the said Mountain Home News
has been continuously and uninterruptedly published in
said Elmore County during the period of 78 consecutive
weeks prior to the first publication of the attached notice.

Nicole E. James

Legal Clerk

Subscribed and sworn to me this 22nd day of Aug,
2018.

Brenda M. Fincher

Notary Public

Residing in Mountain Home, Elmore County, Idaho.

My commission expires **11-16-2022**.



State of Idaho

Department Of Water Resources

WATERMASTER RECOMMENDATION FORM

Water District # 61 ³ NOT 61E

Application # 81319

Applicant Name ELIZABETH ANN NETTLETON

Watermaster Recommendation:

- a) ☐ I do not oppose approval of this application.
b) ☐ I do not oppose approval of this application if it is conditioned as follows:

- c) ☐ I oppose approval of this application for the following reasons:

- d) ☒ Additional comments:

Rye Grass isn't a tributary of Cold Springs Crk.
It is a separate drainage (61³). My authority is (61E)
I don't show a 61-4029 right in any of my 61-E records.

Dated this 15th day of August, 2018

Richard H. Neal

Watermaster Signature

RICHARD H. NEAL

Printed Name