

RECEIVED

NOV 21 2016

WATER RESOURCES
WESTERN REGIONSTATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR TRANSFER OF WATER RIGHT – POINT(S) OF DIVERSION

This form may be used to apply to change and/or add points of diversion for existing water rights and to report an ownership change for a water right(s) in connection with the proposed point of diversion change(s). Do not use this form to apply for changes to other elements of a water right. See the Application for Transfer Instructions for help completing this form and for mailing addresses of Department offices where your application can be submitted.

Check all that apply:

- ☐ Change diversion point(s) ☒ Add diversion point(s) ☐ Ownership change ☐ Ownership split

1. **APPLICANT(S)** Elizabeth Ann Nettleton Phone (208) 366-7364
 2. **MAILING ADDRESS** 18542 SE Wilson Road City Glenns Ferry
 State ID Zip 83623 Email nnettleton@juno.com

- ☐ If the applicant is not an individual and not registered to do business in the State of Idaho, attach documentation identifying officers authorized to sign for the applicant.
☐ If the applicant is not the current water right(s) owner, attach documentation of authority to file the application.
☐ If the application includes a change in ownership of water right(s), attach a copy of the conveyance document, such as a warranty deed, court decree, contract of sale, etc. The conveyance document must include a legal description of the property conveyed or description of the water right if no land is conveyed. Additional fee(s) are required for water right ownership changes; see Item 9 for the fee schedule.

If the ownership change resulted in the water right(s) being split, how did the division occur? Mark one:

- ☐ The water rights or claims were divided as specifically identified in a deed, contract, or other conveyance document.
☐ The water rights or claims were divided proportionately based on the portion of their place(s) of use acquired by the new owner.

- ☐ If the application is not signed by the applicant, attach a Power of Attorney or other documentation providing authority to sign for the applicant.

3. **LIST WATER RIGHT NUMBER(S)** 61-4029

- ☒ Attach a copy of the water right(s) as recorded, available at www.idwr.idaho.gov, *Water Right Transfers, Step 1*, or by contacting any Department office.

4. **TOTAL AMOUNT OF WATER** transferred is 5.14 cubic feet per second and/or _____ acre-feet per annum.
 (diversion rate) (storage volume)

5. **POINT OF DIVERSION** – Describe all the point(s) of diversion to be included on the water right(s) after the proposed change.

- ☐ Attach Eastern Snake Plain Aquifer (ESPA) analysis if this transfer proposes to change a point of diversion affecting the ESPA. ESPA analysis information is available at www.idwr.idaho.gov, *Water Right Transfers, Online Resources*.

New?	Lot	¼	¼	¼	Sec	Twp	Rge	County	Source	Local name or tag #
	4	SE	SW	SW	32	3S	9E	Elmore	Ryegrass Creek	
		SW	SW	NE	7	4S	9E	"	"	
Yes		NW	SE	NE	7	4S	9E	"	"	
		SE	SE	NW	18	4S	9E	"	"	

6. GENERAL INFORMATION

- a. Describe the complete diversion system, including how you will accommodate a measuring device and lockable controlling works should they be required now or in the future:

Existing and new diversions are open ditches that can have measuring devices and control structures installed if they become required.

- b. Who owns the property at the point(s) of diversion? Applicant

If other than the applicant, describe the arrangement enabling the applicant to access the property for the diversion system:

- c. To your knowledge, has/is any portion of the water right(s) proposed to be changed:

Yes No

- ☐ ☒ undergone a period of five or more consecutive years of non-use,
☐ ☒ currently used in a mitigation plan limiting the use of water under the right(s), or
☐ ☒ currently enrolled in a Federal set-aside program limiting the use of water under the right(s)?

If yes, describe:

- d. Is any portion of the water right(s) proposed to be changed currently leased to the Water Supply Bank? ☐ Yes ☒ No

- ☐ If yes and there are multiple owners, attach a Lessor Designation form.
☐ If yes, the individual owner or designated lessor must complete, sign and attach an IRS Form W-9.
(Disregard if these items are on file and ownership has not changed.)

7. **MAP** – ☒ Attach a map of the diversion, measurement, control and distribution system. Include the place of use if a split of the water right occurred. Clearly label the map with township, range, section and $\frac{1}{4}$ $\frac{1}{4}$ of section information. The Map Tool, available at maps.idwr.idaho.gov/TransferApplicationLayouts/ provides a satisfactory template for creating the required map.

8. **SIGNATURE** – The information in this application is true to the best of my knowledge. I understand any willful misrepresentations in this application may result in rejection of the application or cancellation of an approval.

Elizabeth Ann Nettleton Elizabeth Ann Nettleton 11/18/16
Signature of applicant or authorized agent Print name and title if applicable Date

Signature of applicant or authorized agent

Print name and title if applicable

Date

9. **FEE** – ☐ The application filing fee provided in Section 42-221, Idaho Code, must be submitted with the application for transfer. The Application fee is based on the total amount of water proposed for transfer in Item 4: the larger fee for either cubic feet per second (diversion rate) or acre-feet per annum (storage volume). The Fee Schedule is available at www.idwr.idaho.gov, Water Right Transfers, Step 4 and in the Application for Transfer Instructions.

FOR DEPARTMENT USE ONLY

Transfer includes 3 pages of attachments.

Received by RN

Date 11/21/16

Fee paid 900.00

Date 11/21/16

Received by RN

Receipt # W044795

Preliminary review by [Signature]

Date 3/21/2017

Active in the Water Supply Bank? Yes ☐ No ☒ N/A

W-9 received? Yes ☐ No ☐

Name on W-9

W-9 forwarded to fiscal? Yes ☐ No ☐

(Do NOT scan the W-9 – confidential information is held by fiscal only)

Application for Transfer 61-4029



Based on 2015 NAIP Photography

Prepared for Nettleton by ERO 11-2016

**IDAHO DEPARTMENT OF WATER RESOURCES
APPLICATION FOR TRANSFER OF WATER RIGHT
PART 2A**

Current Water Right No.: 61-4029

Current Owner: ELIZABETH ANN NETTLETON

Priority Date: 4/1/1927

Origin: Water Right

Status: Active

Basis: Decreed

Source

RYEGRASS CREEK

Tributary

COLD SPRINGS CREEK

<u>Beneficial Use</u>	<u>From To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
STOCKWATER	01/01 to 12/31	0.12 CFS	
IRRIGATION	02/15 to 11/15	5.02 CFS	
	<u>Total Diversion</u>	5.14 CFS	6.7 AF

Location of Point(s) of Diversion

RYEGRASS CREEK	SW1/4SW1/4NE1/4	Sec. 7,	Twp 04S,	Rge 09E B.M.
ELMORE County				
RYEGRASS CREEK	SE1/4SE1/4NW1/4	Sec. 18,	Twp 04S,	Rge 09E B.M.
ELMORE County				
RYEGRASS CREEK	SE1/4SW1/4SW1/4	Sec. 32,	Twp 03S,	Rge 09E B.M.
ELMORE County				

Place of UseIRRIGATION Within ELMORE County

T04S R09E S7	SWNE	25.00	T04S R09E S7	SENE	5.50
T04S R09E S7	NESW	27.00	T04S R09E S7	SESW	39.00
T04S R09E S7	NWSE	9.30	T04S R09E S7	SWSE	2.70
T04S R09E S18	NWNE	1.10	T04S R09E S18	SWNE	1.10
T04S R09E S18	NENW	38.00	T04S R09E S18	SENE	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

Total Acres: 235

Place of Use: STOCKWATER same as IRRIGATION

Conditions of Approval:

1. C18 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.
2. N05 THE QUANTITY OF WATER UNDER THIS RIGHT FOR STOCKWATER USE SHALL NOT EXCEED 13,000 GALLONS PER DAY.
3. STOCKWATER, 500 RANGE CATTLE
4. C05 RIGHT INCLUDES ACCOMPLISHED CHANGE IN PLACE OF USE PURSUANT TO SECTION 42-1425, IDAHO CODE.
5. C15 THE FOLLOWING WATER RIGHTS FROM THE FOLLOWING SOURCES OF WATER IN BASIN 61 SHALL BE ADMINISTERED SEPARATELY FROM ALL OTHER WATER RIGHTS IN BASIN 61: WATER RIGHT NO. SOURCE NONE NONE THE FOLLOWING WATER RIGHTS FROM THE FOLLOWING SOURCES OF WATER IN BASIN 61 SHALL BE ADMINISTERED SEPARATELY FROM ALL OTHER WATER RIGHTS IN THE SNAKE RIVER BASIN: WATER RIGHT NO. SOURCE NONE NONE ALL WATER RIGHTS WITHIN BASIN 61 ARE FROM CONNECTED SOURCES OF WATER IN THE SNAKE RIVER BASIN AND SHALL BE ADMINISTERED CONJUNCTIVELY.
6. N08 THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT FOR STOCKWATER USE IS NOT A DETERMINATION OF HISTORICAL BENEFICIAL USE.
7. C03 RIGHT INCLUDES ACCOMPLISHED CHANGE IN POINT OF DIVERSION PURSUANT TO SECTION 42-1425, IDAHO CODE.

Decreed Date: 10/26/2000



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

C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

August 9, 2018

ELIZABETH ANN NETTLETON
18542 SE WILSON RD
GLENN'S FERRY, ID 86323

RE: Transfer No. 81319
Water Right No(s). 61-4029

Dear Applicant(s):

The Department of Water Resources has received your water right transfer application. Please refer to the transfer number referenced above in all future correspondence regarding this transfer.

A legal notice of the application has been prepared and is scheduled for publication in the MOUNTAIN HOME NEWS on 8/15/2018 and 8/22/2018. Protests to this application may be submitted for a period ending ten (10) days after the second publication.

If the application is protested, you will be sent a copy of each protest. All protests must be resolved before the application can be considered for approval. If the protest(s) cannot be resolved voluntarily, the Department will conduct a conference and/or hearing on the matter.

If the application is not protested, the Department will process your application and notify you of any action taken on the application. If your application is approved, the Department will send you a copy of the approval document.

Please contact this office if you have any questions regarding the application.

Sincerely,

Rachel Neely
Administrative Assistant

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

Neely, Rachel

From: Neely, Rachel
Sent: Thursday, August 09, 2018 10:29 AM
To: Swenson, Stacy
Subject: Elmore Legal Ads
Attachments: Elmore Cover Letter.docx; Elmore Legal Ad.docx

Good Morning Legal Clerk,

Please see the attached ads for publication on 8/15/2018 & 8/22/2018.

Please confirm these are okay to publish as shown.

Thank you,

Rachel Neely

Administrative Assistant I
IDWR-Western Region
2735 Airport Way Boise, ID 83705
Rachel.Neely@idwr.idaho.gov

August 9, 2018

LEGAL NOTICE DEPARTMENT
MOUNTAIN HOME NEWS
PO BOX 1330
MOUNTAIN HOME, ID 83647-1330

RE: Application for Permit No. 51-13130
 Application for Permit No. 63-34568
 Application for Transfer No. 81319

Dear Legal Notice Department:

Please publish the enclosed legal notices on the dates indicated (once a week for two consecutive weekly issues). If you cannot publish the notices on the proposed dates, please contact us immediately.

An affidavit of publication must be submitted to the Department along with the publication bill. Please send the affidavit and bill to this office before 9/4/2018. Your cooperation is appreciated.

Sincerely,

Rachel Neely
Administrative Assistant

Enclosure(s)

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

51-13130

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

FAULKNER LAND & LIVESTOCK CO 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 intersection in Glens 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 submitted 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 to the applicant.

GARY SPACKMAN, Director

Published on 8/15/2018 and 8/22/2018



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

C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

August 9, 2018

RICHARD NEAL
PO BOX 354
GLENN'S FERRY ID 83623

RE: Application for Transfer No. 81319

Dear Watermaster:

The Idaho Department of Water Resources (IDWR) is seeking written comment and/or recommendations from you regarding the above referenced water right application. A copy of the application is enclosed with this letter for your reference. Please review the application, complete the attached recommendation form, and submit your reply, if any, to this office by **September 4, 2018**.

IDWR will assume you do not object to this application if a timely response is not received. Please contact me if you have any questions in this matter. Thank you for your help.

Sincerely,

Rachel Neely
Administrative Assistant

Shearer, Justin

From: Dave Shaw <dshaw@erresources.com>
Sent: Thursday, April 26, 2018 2:58 PM
To: Shearer, Justin; nnettleton@juno.com
Subject: RE: Transfer to Add Diversion Points to Water Right 61-4029

Mr. Shearer:

Your email to the Nettletons was forwarded to me for response. A review of the adjudication claim file for 61-4029 shows the volume limit is clearly and IDWR clerical error. The volume limit did not appear on any claim filed by the claimants for this water right. The first time the volume limit appears in the file is on a "Diversion Amount Review Sheet" dated 9-16-1996 with Mel Schulte's signature. On this sheet the volume limit is appropriately assigned to the Stockwater portion of the water right. The next time it appears is on a "Profile Report" dated 11/21/1998, the day after the "Notice of Error" report is dated, and is not applied to the entire right instead of the Stockwater portion. This is clearly an internal error that does not appear to have been presented to the claimant during the error correction process.

It is not appropriate to now put the burden of this correction on the right owner. The Director has the authority to make this correction through the transfer process that is currently underway. Notice can be provided as part of the transfer that in addition to adding a point of diversion the transfer will correct an obvious clerical error that occurred during the SRBA.

I hope you find this response satisfactory, if you have questions please let me know.
Dave

David Shaw

ERO Resources Corporation

From: Shearer, Justin <Justin.Shearer@idwr.idaho.gov>
Sent: Thursday, April 26, 2018 10:35 AM
To: nnettleton@juno.com
Subject: Transfer to Add Diversion Points to Water Right 61-4029

Good Morning Elizabeth,

I am contacting you to inform you of the current status on your application for transfer to add a diversion point to Water Right 61-4029. First, let me begin by apologizing in the lengthy delay in processing your application. In March of last year it was discovered that the diversion volume limit that was calculated from the number of stock was applied to the total volume for the entire right. So you have a right with 500 cattle that irrigates 235 acres which is limited to a total diversion of 6.7 AFY. As a result, I submitted your application for transfer to the adjudication bureau for review. It was found that changes to the volume on 61-4029 isn't something that IDWR can pursue with the Water Adjudication Court at this time.

As a result, processing the proposed transfer will further solidify the volume through approval. Currently, as it stands your water right at the rate it was decreed for of 5.14 cfs, would fulfill the annual volume limit of 6.7 af in roughly 15 hours and 45 minutes of pumping. Processing the transfer would add a point of diversion to this limited water right. I am thus contacting you to present you with the current standing and information of your application so that you can advise on how you would like to proceed. The alternative to processing this transfer would be to approach the adjudication water court and file a corrections claim to your partial decree to try to fight the decree and correct the respective

*I spoke w/ D.S.
on 4/30/18
- We'll consult w/ N.N.
about approach SRBA,
but is de w/ us processing
xpc. - Check w/ N.N.
APD*

volume amounts for the beneficial uses described on the water right. Please contact me at your earliest convenience to advise on how you would like to proceed.

Thanks and regards,

Justin Shearer
Idaho Department of Water Resources
Water Resource Agent
(208) 334-2190
justin.shearer@idwr.idaho.gov

Shearer, Justin

From: Shearer, Justin
Sent: Thursday, April 26, 2018 10:35 AM
To: 'nnettleton@juno.com'
Subject: Transfer to Add Diversion Points to Water Right 61-4029

Good Morning Elizabeth,

I am contacting you to inform you of the current status on your application for transfer to add a diversion point to Water Right 61-4029. First, let me begin by apologizing in the lengthy delay in processing your application. In March of last year it was discovered that the diversion volume limit that was calculated from the number of stock was applied to the total volume for the entire right. So you have a right with 500 cattle that irrigates 235 acres which is limited to a total diversion of 6.7 AFY. As a result, I submitted your application for transfer to the adjudication bureau for review. It was found that changes to the volume on 61-4029 isn't something that IDWR can pursue with the Water Adjudication Court at this time.

As a result, processing the proposed transfer will further solidify the volume through approval. Currently, as it stands your water right at the rate it was decreed for of 5.14 cfs, would fulfill the annual volume limit of 6.7 af in roughly 15 hours and 45 minutes of pumping. Processing the transfer would add a point of diversion to this limited water right. I am thus contacting you to present you with the current standing and information of your application so that you can advise on how you would like to proceed. The alternative to processing this transfer would be to approach the adjudication water court and file a corrections claim to your partial decree to try to fight the decree and correct the respective volume amounts for the beneficial uses described on the water right. Please contact me at your earliest convenience to advise on how you would like to proceed.

Thanks and regards,

Justin Shearer
Idaho Department of Water Resources
Water Resource Agent
(208) 334-2190
justin.shearer@idwr.idaho.gov

Shearer, Justin

From: Saxton, Craig
Sent: Monday, January 29, 2018 2:01 PM
To: Shearer, Justin; Grimm, Angie
Cc: Courtney, Andrea; Fritschle, Carter
Subject: RE: Error Correction Request for WR 61-4029

Follow Up Flag: Follow up
Flag Status: Flagged

Hey Justin,

Carter, Andrea, and I met this morning to discuss the proposed error correction.

Unfortunately, correcting the volume on 61-4029 isn't an error that we (IDWR) can pursue correction for. At this point, the situation where we can submit an error correction is extremely limited. It is essentially going to be limited to mistakes the court makes or those types of errors where there was no way the claimant had any opportunity to catch it.

Why Not? As I understand it, it comes down to the finality of judgement. After the decree is issued, there is a 6 month period of time where a correction could be pursued depending on a particular set of circumstances. At this point the legal paths we might be able to take to pursue a correction are all but closed and have been. The only reason we have been able to make these types of error corrections in the past is because, quite frankly, no one argued with it. The essentially let them slide through.

Now, there is concern being expressed about how changing the degree at this state affects the finality of judgement. If we go back and can change a final unified decree then what is the point of the SRBA in the first place. We actually had to withdraw a request for correction of error last month.

Specifically looking at 61-4029, we see that regardless of IDWR's recommendation, the claimant had the opportunity to disagree (catch the error), in the notice of error process, during the regular objection period, and later when the decree was amended. I am extremely sympathetic to the number of possible reasons this could have been missed or overlooked by the claimant. However, it still leaves us stuck.

Ideas for Resolution:

I have notes that there was discussion of trying to fix this through the transfer and they didn't think it could be done. So we brainstormed a little bit:

From the Backfile, we know that the intent for the 7.6 AF was intended for stockwater. This is from page 64 in the "Claim File 61-4029" Backfile:

RECOMMENDATIONS:

REC. PURPOSE	REC. PERIOD FROM TO	REC. DIV RATE CFS	REC. DIV VOL. AF/A	REC. CONS. USE
IRRIGATION	3-15 11-15	6.000	4.84	947.0
STOCKWATER	01-01 12-31	0.140	6.7	676
TOTAL FOR THIS RIGHT		6.140	4.96	

REVIEWED BY: Mel Sultt DATE: 9-16-96

Stock: 500 cattle

$500 \times 12 \text{ gpd} \times 365 = 6.7 \text{ ofc}$
325850

* See attached ~~affidavits~~ Affidavits and documents labeled 11a thru 11k relating to historical season of use.

- Is there a way that this could be used to support the fact that the volume is not applicable to the irrigation use and make a case that the transfer is clarifying an ambiguity in the decree?
- Could the claimant drop the stockwater use and therefore drop the 6.7 AF volume limit?
- What if the argument was made that the 6.7 AF wasn't added incorrectly, it was rather left off of the quantity description for stock water. If the transfer clarified that the 6.7 AF was applicable to stock only, then perhaps, that would allow you to justify that there was no volume limit applicable to the irrigation portion.

QUANTITY: 5.14 CFS
6.70 APY

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 S07 SWSWE
S18 SESENW

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	02-15 TO 11-15	5.02 CFS
	Stockwater	01-01 TO 12-31	0.12 CFS

6

I know this isn't ideal.

Let me know if we need to get together and talk about this some more.

Thanks,
c

From: Saxton, Craig

Sent: Wednesday, January 24, 2018 3:06 PM

To: Shearer, Justin <Justin.Shearer@idwr.idaho.gov>; Grimm, Angie <Angie.Grimm@idwr.idaho.gov>

Subject: RE: Error Correction Request for WR 61-4029

Well...no.

Knowing you are waiting on it, I will bring it up with legal staff again. But they have had some push back that has pretty much brought error corrections of this sort to a stand still. I will let you know what I find out.

Thanks,

c

From: Shearer, Justin

Sent: Wednesday, January 24, 2018 2:45 PM

To: Saxton, Craig <Craig.Saxton@idwr.idaho.gov>; Grimm, Angie <Angie.Grimm@idwr.idaho.gov>

Subject: RE: Error Correction Request for WR 61-4029

Thanks for the follow up Craig,

I am still sitting on the transfer as I had not heard anything back. Any timeline of when to expect the error correction request being "submitted" and processed?

Thanks again,

Justin Shearer

Idaho Department of Water Resources

Water Resource Agent

(208) 334-2190

justin.shearer@idwr.idaho.gov

From: Saxton, Craig

Sent: Wednesday, January 24, 2018 9:45 AM

To: Grimm, Angie <Angie.Grimm@idwr.idaho.gov>; Shearer, Justin <Justin.Shearer@idwr.idaho.gov>

Subject: FW: Error Correction Request for WR 61-4029

Justin and Angie,

In March last year you brought up the possible need for an error correction to 61-4029 due to a transfer you were processing. I wrote it up and passed it to legal for review.

I stumbled across this today and according to the court page, an error correction request has not been submitted.

Are you still sitting on the transfer?

Thanks,

c

From: Saxton, Craig

Sent: Wednesday, March 22, 2017 11:34 AM

To: Courtney, Andrea <Andrea.Courtney@idwr.idaho.gov>; Cooley-Denney, Suzy <Suzy.Cooley-

Denney@idwr.idaho.gov>

Cc: Grimm, Angie <Angie.Grimm@idwr.idaho.gov>; Shearer, Justin <Justin.Shearer@idwr.idaho.gov>

Subject: Error Correction Request for WR 61-4029

Andrea and Suzy,

Western region contacted me yesterday about 61-4029 which is included in a transfer application that they are trying to process. It was discovered that we included a diversion volume limit that was calculated from the number of stock, but applied to the entire right. So we have right with 500 cattle that irrigates 235 acres which is limited to a total diversion of 6.7 AFY.

The reality is that the stockwater use is de minimis and since the right is based on beneficial use, we shouldn't have included a volume for the stockwater use and simply just limited the stock use to 13k gpd. We did include the 13k gpd limit, but also had that 6.7 AFY limit. The source is surface water so there is not irrigation volume limit either.

Anyway, Carter and I talked it through and though the best way to handle it is to remove the 6.7 AFY limit completely if we can.

Attached is a Proposed Correction to the Partial Decree along with the **DRAFT** Error Correction Request (*meaning ... I expect someone will want to change/upgrade/clarify the request to a format more suitable for the court*).

Documentation can be found at <N:\Adjudication\SRBA\Error Corrections\2 - Ready\61-04029>

c

From: Shearer, Justin

Sent: Tuesday, March 21, 2017 12:33 PM

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

Cc: Grimm, Angie <Angie.Grimm@idwr.idaho.gov>

Subject: Transfer Review for WR 61-4029 and Decreed Volume Limitation Questions

Good Afternoon Craig,

I am currently in the process of reviewing a transfer for decreed WR 61-4029 and came across an issue that I would appreciate your insight on. It appears the decree issued a total volume of 6.7 afa, but I would think that the volume limitation should only be on the stockwater use considering adjudication policy was to recommend surface water irrigation without volume limitations. The 6.7 afa is the volume standard for up to 500 cattle claimed. Could you please take a look at this WR and offer your insight on this matter as to whether this is something we can fix in a transfer approval since it is a pretty significant change that ultimately increases the quantity rather than limiting it.

Angie and I would be happy to do conference call with you at your earliest convenience to discuss this matter. Please let me know when a good time for you would be.

Thanks and regards,

Justin Shearer

Idaho Department of Water Resources

Water Resource Agent

(208) 334-2190

justin.shearer@idwr.idaho.gov



ERO Resources Corp.
3314 Grace Street
Boise, ID 83703
(208) 373-7983
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NOV 21 2016

WATER RESOURCES
WESTERN REGION

November 18, 2016

Nick Miller
Western Region Manager
Idaho Department of Water Resources
2725 Airport Way
Boise, ID 83705-5082

RE: Application for Transfer of Water Right No. 61-4029 in the Name of Elizabeth Ann Nettleton

Dear Nick:

Enclosed is an application for transfer seeking to add a point of diversion on Ryegrass Creek for water right no. 61-4029. The new point of diversion is located at an old dam site but the diversion structure will be constructed in a manner that does not create a dam under IDWR's rules.

Please let me know if you have any questions or if I can provide you with any additional information. Thank you in advance.

Yours truly,

A handwritten signature in blue ink that reads "Dave".

David Shaw

Enc.

cc: Elizabeth Nettleton w/o Enc.

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JAN 17 2019

DEPARTMENT OF
WATER RESOURCES

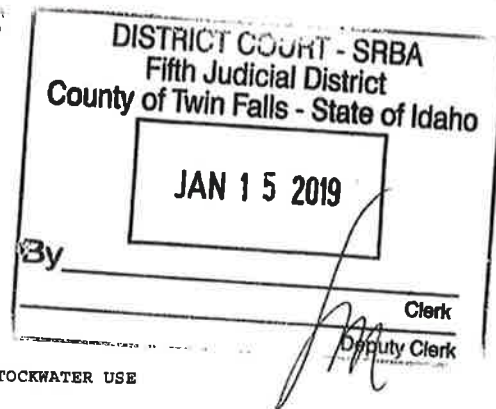
IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

AMENDED

In Re SRBA)
)
Case No. 39576)

PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR

Water Right 61-04029



NAME AND ADDRESS: ELIZABETH ANN NETTLETON
18542 SE WILSON RD
GLENN'S FERRY, ID 83623

SOURCE: RYEGRASS CREEK TRIBUTARY: COLD SPRINGS CREEK

QUANTITY: 5.14 CFS

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 S07 SWSWNE
S18 SESENW

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	02-15 TO 11-15	5.02 CFS
	Stockwater	01-01 TO 12-31	0.12 CFS
			6.70 APY

PLACE OF USE:	Irrigation	Stockwater
T04S R09E S07	SWNE 25.0 NESW 27.0 NWSE 9.3 NWNE 1.1 NENW 38.0 NESW 16.0 NWSE 8.4	Within Elmore County SENE 5.5 SESW 39.0 SWSE 2.7 SWNE 1.1 SENW 30.0 SESW 27.0 SWSE 4.9
S18		
235.0 Acres Total		
Stockwater	Same as Irrigation	Within Elmore County

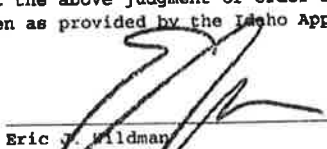
OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT FOR
STOCKWATER USE IS NOT A DETERMINATION OF HISTORICAL BENEFICIAL
USE.

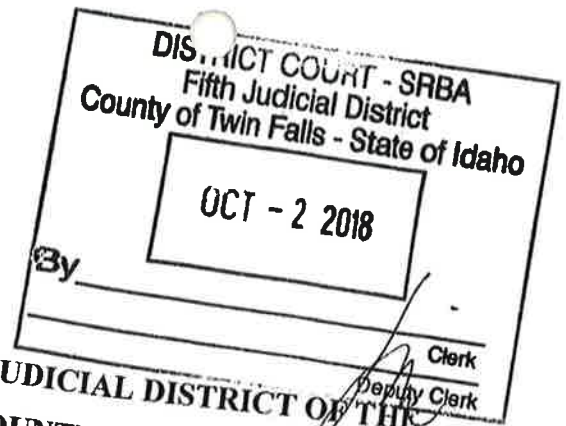
THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS
NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT
ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY
DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE
ENTRY OF A FINAL UNIFIED DECREE. I.C. SECTION 42-1412(6).

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.


Eric J. Wildman
Presiding Judge of the
Snake River Basin Adjudication

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OCT 03 2018
DEPARTMENT OF
WATER RESOURCES



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
)
)
)

) NOTICE OF HEARING
)
)
)
)

An Amended Partial Decree was issued for the above-captioned water right on March 4, 2003. On October 1, 2018, Elizabeth Ann and Nick Nettleton filed a *Motion to Set Aside, Reopen and/or Motion to Alter or Amend Partial Decree*. The *Motion* requests the Court set aside the *Amended Partial Decree* pursuant to Idaho Rule of Civil Procedure 60(a) or 60(b).

Therefore, IT IS ORDERED that a hearing on the *Motion* will be held on **January 15, 2019, at 1:30 p.m. (Mountain Time)** at the Snake River Basin Adjudication District Court, 253 3rd Avenue North, Twin Falls, Idaho. Telephone participation will be available by calling 1-720-279-0026 and entering 786692 followed by the # sign when prompted. However, no cell phones or speaker phones will be permitted as they interfere with our sound system making the proceeding difficult to accurately record. Video teleconferencing ("VTC") will also be available by appearing at the Idaho Department of Water Resources, Idaho Water Center, 322 E. Front St., Conference Rm. B, Boise, Idaho.

DATED: October 2, 2018


ERIC J. WILDMAN
Presiding Judge
Snake River Basin Adjudication

NOTICE OF HEARING

CERTIFICATE OF MAILING

I certify that a true and correct copy of the NOTICE OF HEARING was mailed on October 02, 2018, with sufficient first-class postage to the following:

S. BRYCE FARRIS
SAWTOOTH LAW OFFICES PLLC
1101 W RIVER ST STE 110
PO BOX 7985
BOISE, ID 83707
Phone: 208-629-7447

DIRECTOR OF IDWR
PO BOX 83720
BOISE, ID 83720-0098

MARGARET WALKER
WILLIAM H WALKER
RT 1 BOX 458
GLENN'S FERRY, ID 83623
Phone: 208-366-2235