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FEB 20 2018

Department of Water Resources
Eastern Region

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*Attorneys for Mitchell D. and Elaine R.
Sorensen*

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

IN THE MATTER OF APPLICATION FOR
TRANSFER NO. 80059 IN THE NAME OF
MITCHELL D. AND ELAINE R. SORENSEN

**AFFIDAVIT OF MITCHELL D.
SORENSEN**

STATE OF IDAHO)
) ss.
County of Butte)

I, Mitchell D. Sorensen, do solemnly swear (or affirm) that the testimony given in this sworn statement is the truth, the whole truth, and nothing but the truth, that it is made on my personal knowledge, and that I would so testify in open court if called upon to do so.

And being so sworn I depose and say:

1. I am over the age of eighteen (18) and competent to testify to the matters contained herein.

2. I currently reside in Butte County, Idaho. My address is 3871 W. 2500 N., Moore, ID 83255.
3. I own property located in the W1/2 of Section 21, Township 05N, Range 26E which I refer to as the "Smith Place". I leased the Smith Place in 2012, and purchased the property in 2013. I wish to provide factual information regarding irrigation that occurred in 2012, and information relative to the well that was located on the property (the "Old Smith Well").
4. When I took control of the Smith Property under a lease at the beginning of 2012, I discovered that because of the shallow depth of the Old Smith Well, it had gone dry several years prior. Furthermore, the well was in a state of disrepair and could not pump water—even if it would have been available—without significant, costly repairs. Due to these circumstances beyond my control, I determined that it was not possible at that time to use the Old Smith Well as a source of irrigation water.
5. Water Right Nos. 34-2248, 34-14022, 34-14024, 34-14026, and 34-14028 are surface water rights that are appurtenant to the Smith Property. I used all the water that was available to me under these water rights to flood irrigate the Smith Property in 2012.
6. I used the irrigation system that was in place at the time to flood irrigate the Smith Property. This consisted of a ditch that ran across the northern edge of the property, and another ditch that ran across the middle of the property. I made every reasonable effort to irrigate the entirety of the Smith Property with the irrigation system and water that was available to me at that time. If portions of the authorized place of use were not irrigated, this was due to circumstances beyond my control associated with the difficulties inherent to flood irrigation.

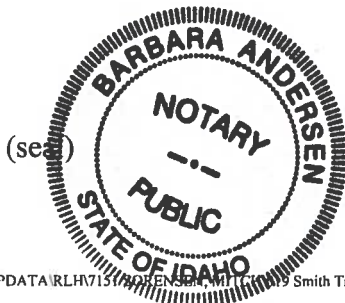
7. Despite these difficulties, most of the Smith Property was irrigated in 2012. I am certain that water made it to the southern end of the property because the owners of the property to the immediate south of the Smith Property contacted me to tell me that my irrigation water was crossing onto their property.

DATED this 12th day of February, 2018.



Mitchell D. Sorensen

SUBSCRIBED AND SWORN TO before me this 12th day of February, 2018.





Notary Public for Idaho
Residing at Moore, Idaho
My Commission Expires on 11-29-2018

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Holden Kidwell
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February 15, 2018

James Cefalo
Idaho Department of Water Resources
900 N. Skyline Drive, Suite A
Idaho Falls, ID 83402-1718

Re: Application for Transfer No. 80059

Dear James:

You recently requested an Affidavit from my client, Mitchell Sorensen regarding irrigation of the Smith property in 2012. You also requested an explanation of the defenses to forfeiture of Water Right No. 34-14030.

Attached you will find an Affidavit from Mr. Sorensen describing the irrigation of the Smith property that occurred while Mr. Sorensen leased the property in 2012.

Furthermore, I wish to provide an explanation regarding the defenses to forfeiture that we believe exist for Water Right No. 34-14030. It is our belief that forfeiture is not applicable in this case because non-use of the well for 34-14030 resulted from circumstances over which the water right owner had no control. Mr. Sorensen took control of the Smith property under a lease beginning in 2012. At that time, he found the well in a state of disrepair and it could not pump water. The owners of the well did not have the financial resources at that time to make the necessary repairs to the well. Furthermore, because of the shallow depth of the well it had gone dry several years prior. Because of these circumstances, the well had not been used for a number of years. Along with these circumstances, it is our belief that another defense to forfeiture exists. While Mr. Sorensen was not able to use Water Right No. 34-14030 to irrigate the property in 2012, he did make use of surface water rights appurtenant to the property that year. You will note in the attached Affidavit that Mr. Sorensen made every reasonable effort to irrigate the Smith property in 2012 using Surface Water Right Nos. 34-2248, 34-14022, 34-14024, 34-14026, and 34-14028.

Because nonuse of the well for Water Right No. 34-14030 is due to circumstances beyond water right owner's control, and because of complete irrigation from other sources in 2012, it is our belief that there has been no forfeiture of Water Right No. 34-14030.

Established in 1896

James Cefalo
February 15, 2018
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If you have any questions or need any additional information, do not hesitate to contact me.

Best regards,



Luke H. Marchant
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

LHM/rew
Enclosures

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