

MEMO

TO: Water Right Files 29-328A, 29-14132, 29-14168
FROM: James Cefalo
DATE: October 30, 2015
RE: Ownership Change Conditions

On March 22, 2004, the Snake River Basin Adjudication Court issued a partial decree for water right 29-328A in the name of Kenneth and Donna Williams. Water right 29-328A bore a priority date of October 10, 1878 and authorized the diversion of 2.52 cfs from Birch Creek for the irrigation of 126 acres. The water right included the following condition:

The amount of water diverted under this water right may not exceed 1/24 of the stream flow of Birch Creek at the point of diversion described below at any given time. This water right shall not provide more than 0.02 cubic feet per second per acre at any time.

All of the senior water rights on Birch Creek share the same priority date (October 10, 1878) and carry a condition describing what fraction of the total stream flow each senior water user is entitled to divert. All of the original fractions were based on the stream split into 24 parts (for example, 1/24 or 2/24).

In January 2015, Arthur and Lorrie Martinez filed a change of ownership, seeking to update the ownership for a 98.5-acre portion of water right 29-328A. Martinez purchased the property in December 2014. Water right 29-328A was split in proportion to the acreage. The Martinez portion was 98.5/126 (or 78.2%) of the total water right. The stream flow condition mentioned above was also split in proportion to acreage ownership. The Martinez portion was calculated to be 3.26% of the total flow in Birch Creek ($1/24 \times .782$).

On February 24, 2015, Richard and Lorry Baker filed a change of ownership, seeking to update the ownership for a 17.5-acre portion of water right 29-328A. Included in the documents provided by Baker was a written agreement from 2002 stating that Ken and Donna Williams granted Baker 1/4 of 1/4 of 1/6 of the flow of Birch Creek. The Williams/Baker agreement predated Williams sale of land to Northcom 47 LLC (Martinez's predecessor in interest). Therefore, when Martinez purchased the land from Williams, it came with a slightly reduced share of water in the total flow of Birch Creek.

I am now completing the Baker ownership change. The diversion rate listed on the face of the water rights will still be split in proportion to acreage ownership. Martinez = 1.97 cfs (78.2%), Baker = 0.35 cfs (13.9%), and the remaining portion = 0.20 cfs (7.9%)

The condition describing the share of the total flow in Birch Creek will be split based on the Williams/Baker agreement, where Baker gets 1/4 of 1/4 of 1/6 (or 1.04%) of the total flow in Birch Creek. The remaining part of the 1/24 share originally described in the right will be split proportionate to acres owned. Because Martinez owns 98.5 of the remaining 108.5 acres (126 acres – Bakers' 17.5 acres = 108.5 acres), Martinez would be entitled to 90.8% (98.5/108.5) of the remaining shares in Birch Creek. The shares in Birch Creek (as defined in conditions) will be split as follows:

<u>Water Right</u>	<u>Share in Birch Creek</u>
29-328A (Original)	4.17% (1/24)
29-14168 (Baker)	1.04% (1/4 of 1/4 of 1/6)
29-14132 (Martinez)	2.84% (3.13% x 98.5/108.5)
29-328A (remainder)	0.29% (3.13% x 10/108.5)

The Birch Creek split condition included on water right 29-14132 during the Martinez ownership change is in error. The condition must be changed to match this memo. Martinez has been notified of this change and will be sent a revised copy of water right 29-14132.