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APR 19 2013

DEPT. OF WATER RESOURCES
SOUTHERN REGION

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Attorneys for Hubert Shaw

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF THE CREATION OF
WATER RIGHT NO. 37-08705.

**PETITION FOR RECONSIDERATION
OF PRELIMINARY ORDER**

William Hubert Shaw ("Petitioner") seeks reconsideration of the April 5, 2013 Preliminary Order in this case regarding Water Right No. 37-08705. Specifically, Petitioner asks that the Department amend its order to grant a diversion rate of 7.0 cfs for the water right in question. This petition for reconsideration is brought pursuant to Idaho Code § 67-5243.

A. FACTUAL BACKGROUND

On February 21, 1991, Petitioner submitted his Application for Permit seeking to appropriate 7.0 cfs of groundwater for the purpose of irrigating his crops on 420 acres of land. On the same date, Petitioner also submitted an Application for Drilling Permit, which was approved by the Department on March 3, 1991. The well was drilled by Elsing Drilling between April 1-3, 1991. The Permit to Appropriate Water was approved on June 12, 1991, granting

permission for Petitioner to appropriate ground water for the purpose of irrigation at a 7.00 cfs rate of diversion. It is important to note that at the time the Application was made, the property in question also had surface water rights. However, due to drought conditions at the time, the surface water was insufficient to irrigate Petitioner's crops. The Application made it clear that the ground water rights would be supplemental to the surface water rights.

Prior to drilling the well in 1991, Petitioner contacted Silver Creek Irrigation to install a pump and motor on the well that would pump 7.0 cfs. Petitioner relied upon Silver Creek Irrigation to install a motor and pump that would pump 7.0 cfs. Silver Creek Irrigation did, in fact, install a 300 hp pump on the well in 1991. The individual who installed the pump on behalf of Silver Creek Irrigation was Max Auker. In 2008, there was some question by the Department whether the pump installed on the well in 1991 was set up for 7.0 cfs. Mr. Auker can specifically recall installing the pump on the well at issue, and that the pump and motor were set up to divert water at the rate of 7.0 cfs. However, seventeen years later (from 1991 to 2008) Mr. Auker was unsure of the precise year that the pump was installed. By 2008, Silver Creek Irrigation had changed ownership and the original pump documentation was not available. Mr. Auker believed that it was approximately 1989 or 1990. As a result, Mr. Auker submitted a statement to the Department stating his belief. Upon further inquiry, Mr. Auker acknowledges that 1991 was the year in which he installed the pump on the well, and that he installed a 300 hp pump.

As discussed above, the Water Right at issue was always intended to be supplemental to the surface water. The first two years that the ground water was appropriated under the Permit, 1991 and 1992, were drought years in the Dietrich area. Consequently, Petitioner used all 7.0 cfs available through the use of the 300 hp pump that had been placed on

the well. Accordingly, when Petitioner submitted his Proof of Beneficial Use, he had actually used the full 7.0 cfs under the Permit as the documentation sets forth. Unfortunately, Petitioner noted that there was a 200 hp pump on the well, not the 300 hp pump that was actually on the well. This was simply a clerical error.

During the summer of 1993, it became apparent that there would be sufficient surface water such that the use of all 7.0 cfs of ground water would not be necessary. In order to be the most economical in his farming practices, Petitioner had the 300 hp pump removed and replaced it with a 200 hp pump. Petitioner has previously submitted to the Department Invoice No. 5089 from Layne Pumps, Inc. demonstrating the work that Layne Pumps performed on the pump in 1993. The Invoice contains the notation indicating that Layne Pumps repaired, removed and replaced the 300 hp pump with a 200 hp pump, thereby demonstrating that the well initially had a 300 hp pump when installed in 1991. The 300 hp pump was then moved to a different well, as noted on the invoice.

The invoice further indicates that reconditioned 14-inch Layne bowls were placed on the pump. The curve previously submitted to the Department with Mr. Auker's 2008 statement was based upon the 300 hp pump having a 14-inch Layne bowl. Admittedly, the curve with the 14 inch Layne Bowl tops out at 6.2 cfs. However, it is believed that the original bowl that was installed with the 300 hp pump was a 14-inch Johnson bowl, for which 7.0 cfs would have been easily attainable, given that this particular well was an open discharge well. Unfortunately, it has been over 22 years since the well was drilled, and nearly 20 years since the 300 hp pump was removed and replaced with the 200 hp pump, and it has been impossible to find all of the supporting documentation.

Notwithstanding the above, the current situation for Petitioner is dire. Petitioner developed his property based upon the 7.0 cfs that was granted in the Permit to Appropriate Water. Petitioner actually used the 7.0 cfs during the drought years of 1991 and 1992, and later was able to get by using less ground water with a 200 hp pump during years with more abundant surface water. Now, however, Petitioner finds himself without sufficient surface water and in need of the full 7.0 cfs this year. Petitioner should not now be punished for having used less of the supplemental ground water in years when surface water was more abundant. That is the very nature of a supplemental water right.

B. CONCLUSION

In summary, the original pump and motor that was installed and used by Petitioner for the first two years of the original permit was a 300 hp pump on an open discharge well. The pump originally had the capacity to divert water at the rate of 7.0 cfs, and was so used by Petitioner. If the Department assumes that the 14-inch Layne bowls identified on Layne Pump Invoice No. 5089 were the same bowls that were initially installed, at a very minimum Petitioner has proved beneficial use of 6.2 cfs. Petitioner respectfully requests that the Department reconsider its Preliminary Order relating to Water Right No. 37-08705 and amend the Water Right to include a rate of diversion of 7.0 cfs, or in the alternative, a rate of diversion of 6.2 cfs.

DATED this 19 day of April, 2013.

COLEMAN, RITCHIE & CLUFF

By Benjamin J. Cluff
BENJAMIN J. CLUFF

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BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF THE CREATION OF
WATER RIGHT NO. 37-08705.

**AFFIDAVIT OF MAX AUKEER IN
SUPPORT OF PETITION FOR
RECONSIDERATION**

I, Max Auker, being first duly sworn, do hereby depose and state as follows:

1. My name is Max Auker. I am a resident of the State of Idaho, I am over the age of eighteen years, and I am competent to testify to the matters contained herein.
2. The facts set forth herein are based upon my own personal knowledge.
3. I previously worked for Silver Creek Irrigation in the late 1980's and early 1990's and was responsible for installing pumps and motors on wells for the purposes of irrigation.
4. I am personally familiar with the well owned by Petitioner, William Hubert Shaw, associated with Water Right No. 37-08705. In or about 1991, I personally installed the pump and

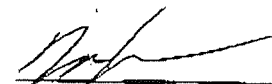
motor on the well. As originally configured, the pump that was placed on the well was a 300 hp pump. The pump was set up to discharge water at the rate of 7.0 cfs.

5. In or about 2008, approximately seventeen years after the pump was installed, a question arose regarding the original configuration of the pump on the subject well. I submitted a statement to the Department stating that I installed the pump on Petitioner's well to discharge water at the rate of 7.0 cfs. I further stated that this was done in approximately 1989 or 1990. This was only an approximation of the time frame in which I performed the work, since the Silver Creek Irrigation records were no longer in existence. My approximation was intended to include the late 80's and early 90's, including 1991. Upon further review, I can state that the pump was installed in 1991, and was configured to discharge water at the rate of 7.0 cfs.

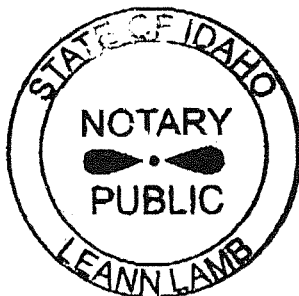
6. The suggestion that, in my 2008 statement to the Department, I may have been referencing a different well owned by Petitioner is inaccurate. In my 2008 statement, I was specifically referencing the well associated with Water Right No. 37-08705.

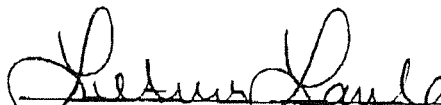
7. Further your affiant sayeth naught.

Dated this 18 day of April, 2013.


MAX AUKER

SUBSCRIBED AND SWORN to before me this 18th day of April, 2013.




NOTARY PUBLIC
Residence: Jerome ID
My Commission Expires: 4/25/17

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BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF THE CREATION OF
WATER RIGHT NO. 37-08705.

**AFFIDAVIT OF HUBERT SHAW IN
SUPPORT OF PETITION FOR
RECONSIDERATION**

I, William Hubert Shaw, being first duly sworn, do hereby depose and state as follows:

1. My name is William Hubert Shaw. I am the Petitioner in the above-described action.
2. I am a resident of the State of Idaho, I am over the age of eighteen years, and I am competent to testify to the matters contained herein.
3. The facts set forth herein are based upon my own personal knowledge.
4. On February 21, 1991, I submitted my Application for Permit seeking to appropriate 7.0 cfs of groundwater for the purpose of irrigating crops. The well associated with the Application was drilled by Elsing Drilling between April 1-3, 1991.

5. The Permit to Appropriate Water was approved on June 12, 1991. Prior to drilling the well, I had contacted Silver Creek Irrigation to install a pump and motor on the well that would pump 7.0 cfs. I relied upon Silver Creek Irrigation's expertise to install a motor and pump that would pump 7.0 cfs.

6. In accordance with my request, Silver Creek Irrigation installed a 300 hp pump on the well in 1991, which was set up to pump 7.0 cfs. The 300 hp pump was purchased by me specifically for use on the well associated with Water Right No. 37-08705. The well is an open discharge well.

7. I also hold surface water rights for the property upon which the Permit was issued. Water Right No. 37-08705 was always intended to be supplemental to the surface water, as noted in my Application.

8. The first two years of using the well, 1991 and 1992, were drought years. I was required to use, and did in fact use, all 7.0 cfs. This was accomplished through the use of the 300 hp pump that had been placed on the well. In submitting my Proof of Beneficial Use, I erroneously stated that the pump was a 200 hp pump, which was simply a clerical mistake in the Proof of Beneficial Use.

9. During the summer of 1993, there was sufficient surface water for irrigating the property to which the ground water Permit applied, such that I was not required to use all 7.0 cfs. In order to be the most economical in my farming practices, and to comply with the supplemental nature of the Permit, I had the 300 hp pump removed and replaced it with a 200 hp.

10. I previously submitted to the Department an invoice from Layne Pumps, Inc. demonstrating the work that Layne Pumps performed on the pump, with the notation indicating that the 300 hp pump was repaired, removed and replaced with a 200 hp pump.

11. The invoice indicates that in 1993 reconditioned 14-inch Layne bowls were placed in the pump. As a result, the curve that was previously submitted with Mr. Auker's 2008 statement was based upon the pump having a 14-inch Layne bowl. However, I believe that the original bowl that was installed with this pump was a 14-inch Johnson bowl, for which 7.0 cfs would have been easily attainable given that this particular well was an open discharge well.

11. This year we are once again experiencing drought conditions which will reduce the amount of surface water available for the subject property. In addition, Magic Reservoir, the source of the surface water associated with the subject property, has been substantially drained for the purpose of repairing the dam. This has further reduced the amount of surface water available this year.

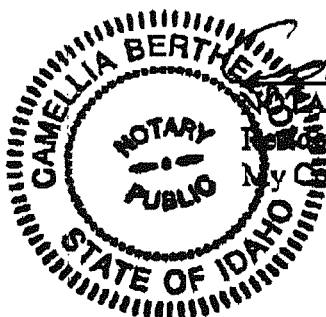
12. As a result, I will need all 7.0 cfs that were granted in the permit and set forth in my Proof of Beneficial Use.

13. Further your affiant sayeth naught.

Dated this 18 day of April, 2013.


HUBERT SHAW

SUBSCRIBED AND SWORN to before me this 18 day of April, 2013.




NOTARY PUBLIC
Residence: 9438 3205 Dietrich Rd
My Commission Expires: 05/2012

AFFIDAVIT OF HUBERT SHAW IN SUPPORT
OF PETITION FOR RECONSIDERATION - 3