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DEPARTMENT OF
WATER RESOURCES

Attorney for Basin and Range Resource Company, LLC

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

In the Matter of License No. 63-7533	)	MOTION FOR SUMMARY
	)	DECISION AND
_____	)	MEMORANDUM IN SUPPORT

Motion

Basin and Range Resource Company, LLC ("Petitioner"), pursuant to IDAPA 37.01.01.260, respectfully moves for a Summary Decision correcting License No. 63-7533. This Motion is supported by the following Memorandum, the contemporaneously filed Affidavit of Steve Hannula and Affidavit of Dana L. Hofstetter and the records of the Idaho Department of Water Resources ("IDWR" or the "Department"). The Petitioner respectfully requests that a decision on this Motion be made by the Department as soon as possible because of the pendency of the related Snake River Basin Adjudication ("SRBA") subcase.

Memorandum

I. Statement of uncontroverted facts.

On or about December 17, 1971, Ray Obendorf (the "Permitholder") submitted an Application for Permit to Appropriate the Public Waters of the State of Idaho (the "Application") with the, then titled, Idaho Department of Water Administration. *Affidavit of Dana L. Hofstetter, Exhibit A.* The Application requested 1.0 cubic feet per second ("cfs") of ground water for 2,000 cattle to be diverted in the NE1/4SE1/4 of Section 23, Township 6 North, Range 5 West, B.M., in Payette County, Idaho. *Id.*

On December 18, 1975, Director Keith Higginson of the Idaho Department of Water Administration approved the Application for 1.0 cfs and issued Water Right Permit No. 63-7533 (the "Permit"). *Id.*

The Permitholder timely submitted the Proof of Beneficial Use for the Permit on or about November 3, 1976 and indicated that the extent of use was 1.0 cfs. *Id.*

An IDWR representative conducted a licensing field examination on March 24, 1977. *Affidavit of Steve Hannula, Exhibit B.* The IDWR field examiner identified in the Field Report a total quantity of 1.0 cfs determined from "test pump information" and also a quantity of 80 acre feet per annum ("AFA"). *Id.* The Field Report section entitled "Measurement Calculation" further noted, *inter alia*, "Water is used for stock water and also to sprinkle feedlot and cattle during dry hot weather. Well tested at 50" diversion rate into ditch." *Id.* The "Remarks" section of the Field Report noted, "System in operation at time of exam." *Id.*

By subsequent notations dated January 31, 1978 on the Field Report, another IDWR reviewer (initials WHM), crossed out the 1.0 cfs quantity identified by the original field examiner

and replaced it with 0.45 cfs. *Id.* The 0.45 cfs apparently was based on calculations for 2,000 head of cattle drinking 12 gallons per day each during a 2 hour period each day. *Id.* The original 80 AFA quantity in the Field Report also was struck and replaced with a volume of 27 AFA, based on calculations of what 2,000 cattle would drink over the course of a year. *Id.* Thus, the new quantities of 0.45 cfs and 27 AFA were based solely on the calculated quantities of water that the 2,000 cattle would drink but did not include any quantities associated with the related uses of feedlot and cattle sprinkling apparently for dust suppression and cattle cooling. *Affidavit of Steve Hannula.*

On or about February 21, 1978, IDWR issued Water Right License No. 63-7533 to Ray Obendorf. *Affidavit of Steve Hannula, Exhibit C.* License No. 63-7533 in certain places designated a diversion rate of 1.0 cfs and, in other places, 0.45 cfs. *Id.* The License identified a total annual volume of 27 acre feet. *Id.*

Petitioner is a successor in interest to Water Right No. 63-7533. *Affidavit of Dana L. Hofstetter, Exhibit B.*

II. Based on the Field Report prepared by the IDWR field examiner, the licensed quantities should be 1.0 cfs and 80 AFA.

As part of the field examination report, the IDWR agent determined that the quantities of 1.0 cfs and 80 AFA were appropriate based on the observed uses for cattle drinking and feedlot and cattle sprinkling. *Affidavit of Steve Hannula.* However, a subsequent IDWR reviewer reduced these quantities to 0.45 cfs and 27 AFA, respectively, based on calculations of only the amount of water needed for cattle drinking. *Id.* Thus, based on the field examination, quantities of 1.0 cfs and 80 AFA should have been identified on the License, instead of 0.45 cfs and 27 AFA.

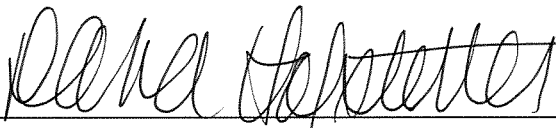
These mistakes occurred in determining the extent of actual beneficial use at the time of the field exam. These are the kinds of licensing errors that IDWR has the authority to correct, and has corrected in the past. *See In the Matter of License No. 61-07189 in the Name of Magic West, Inc.*, IDWR Final Order (January 22, 1999).

III. Conclusion.

For the foregoing reasons, License No. 63-7533 incorrectly omits quantities associated with valid beneficial uses. The License should be corrected to provide for quantities of 1.0 cfs and 80 AFA.

DATED this 25th day of February, 2011.

HOFSTETTER LAW OFFICE, LLC

By 
Dana L. Hofstetter, for the firm
Attorney for Basin and Range Resource Company,
LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 25th day of February, 2011, I caused a true copy of the foregoing MOTION FOR SUMMARY DECISION AND MEMORANDUM IN SUPPORT to be served by the method(s) indicated on the following:

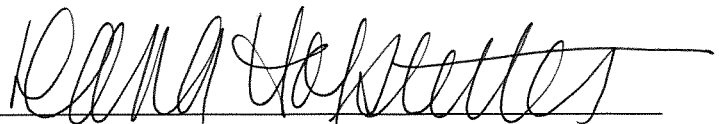
Original to:

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