

Cefalo, James

From: Cefalo, James
Sent: Monday, May 24, 2021 9:57 AM
To: 'Jerry Rigby'; Randy Budge; Price, Fredric W
Cc: MAUGHAN, JASON [AG/1850]; Mandy Davis
Subject: RE: P4 Production, LLC - Farmer's Land & Irrigation Co - IDWR Transfer No. 84061
Attachments: 5-24-21 Draft Transfer 84061.pdf

Attached is a revised draft transfer, incorporating the change to Condition 9 proposed by Randy. When the BLM withdraws its protest, the withdrawal can refer to this 5-24-21 Draft Transfer.

Last week I received the additional filing fee from P4 Production. I still need a written confirmation of the amendment. Randy, when you get a chance, please print out page 3 of the amended application attached to my previous email, sign the page and email me a scanned copy.

James Cefalo
Regional Manager
IDWR Eastern Region
(208) 525-7161

From: Jerry Rigby [mailto:jrigby@rex-law.com]
Sent: Monday, May 17, 2021 8:37 AM
To: Randy Budge <randy@racineolson.com>; Cefalo, James <James.Cefalo@idwr.idaho.gov>
Cc: MAUGHAN, JASON [AG/1850] <jason.maughan@bayer.com>; Josh Hanks <watermasterdist11@gmail.com>; Price, Fredric W <fwprice@blm.gov>; Mandy Davis <mdavis@rex-law.com>
Subject: RE: P4 Production, LLC - Farmer's Land & Irrigation Co - IDWR Transfer No. 84061

James,
Thanks.
I concur with Randy as to the Lessee being Farmer's Land and Irrigation Co.
Thanks
Jerry

Jerry R. Rigby
Rigby, Andrus & Rigby Law, PLLC
25 N. 2nd E.
Rexburg, Idaho 83440
208-356-3633

From: Randy Budge <randy@racineolson.com>
Sent: Sunday, May 16, 2021 4:35 PM
To: Cefalo, James <James.Cefalo@idwr.idaho.gov>; Jerry Rigby <jrigby@rex-law.com>
Cc: MAUGHAN, JASON [AG/1850] <jason.maughan@bayer.com>; Josh Hanks <watermasterdist11@gmail.com>; Price, Fredric W <fwprice@blm.gov>; Mandy Davis <mdavis@rex-law.com>; Randy Budge <randy@racineolson.com>
Subject: RE: P4 Production, LLC - Farmer's Land & Irrigation Co - IDWR Transfer No. 84061

SCANNED

MAY 01 2022

Cefalo, James

From: Randy Budge <randy@racineolson.com>
Sent: Sunday, May 16, 2021 4:32 PM
To: Cefalo, James; Jerry Rigby
Cc: MAUGHAN, JASON [AG/1850]; Josh Hanks; Price, Fredric W; Mandy Davis; Randy Budge
Subject: RE: P4 Production, LLC - Farmer's Land & Irrigation Co - IDWR Transfer No. 84061

James,

WR 11-531C and 11-449 we leased to Last Chance and subleased to Farmer's and should be part of the transfer, being apparently omitted from the Amended Application. We will mail the additional \$160 in filing fees right away. If BLM will approve of the approval conditions and remove its protest we can move forward with approval.

Thanks!

Randy

Randall C. Budge
Attorney



201 E. Center Street / P.O. Box 1391
Pocatello, Idaho 83204
(208)232-6101 - Phone
(208)232-6109 - Fax

racineolson.com

CONFIDENTIALITY NOTICE - This email and its attachments may contain information that is confidential, privileged, or otherwise protected from disclosure. If you believe this email may have been sent to you in error, please notify the sender immediately.

From: Cefalo, James <James.Cefalo@idwr.idaho.gov>
Sent: Friday, May 14, 2021 9:31 AM
To: Jerry Rigby <jrigby@rex-law.com>; Randy Budge <randy@racineolson.com>
Cc: MAUGHAN, JASON [AG/1850] <jason.maughan@bayer.com>; Josh Hanks <watermasterdist11@gmail.com>; Price, Fredric W <fwprice@blm.gov>; Mandy Davis <mdavis@rex-law.com>
Subject: RE: P4 Production, LLC - Farmer's Land & Irrigation Co - IDWR Transfer No. 84061

Dear Parties:

During our conference yesterday, Randy mentioned that Farmers Land & Irrigation Company would be subleasing all of the relevant water rights held by P4, including water rights 11-449 and 11-531C. These two rights were not included in the Feb 8, 2021 Amended Application 84061. I thought that these rights already included the Farmers Land headgate as

an authorized point of diversion. After further investigation, however, I found that water rights 11-449 and 11-531C only describe the Last Chance Canal diversions. Attached are reports for water rights 11-449 and 11-531C.

If water rights 11-449 and 11-531C will now be diverted by Farmers Land, these rights should be included in Application 84061. Attached is an amended application. I only completed Page 3 because that is the only page that needs to be amended. I added water rights 11-449 and 11-531C to the list of rights and adjusted the total amounts.

The proposed place of use now covers 1,360 acres. These acres lie entirely within the service area for Farmers Land, do not include any federal land, appear to be irrigated, and don't have many overlapping rights. In other words, it is highly likely that these acres are irrigated from the Farmers Land Canal and are covered by Farmers Land shares. The rights are limited to the irrigation of 152 acres. The proposed place of use should be large enough to ensure that the P4 water rights can be used somewhere within the proposed place of use every year. As Farmers Land claims its rights in the adjudication, the company will adopt a clean, updated service boundary. The place of use for the P4 rights can be changed to match that boundary in the future.

The draft transfer attached includes water rights 11-449 and 11-531C and the conditions proposed by the BLM. If the draft transfer is accurate and consistent with our settlement discussion, there are a few things that need to happen before the transfer can be approved:

1. P4 Production needs to file an Amended Application (only page 3). I have decided that the amendment will not require public notice. Water rights 11-449 and 11-531C are already delivered to the Farmers Land headgate for injection into the Bear River. Therefore, the proposed change will have no hydrologic impact on the Soda Creek system. We also discovered that the water rights have not been delivered or accounted for by WD11 over the years, so there will be no hydrologic impact to the Bear River system. In essence, the transfer is reflecting how water has been delivered for many years.
2. The amended application involves more water rights, so the associated filing fee is higher. The filing fee would be \$740. The original filing included a check for \$580. P4 should send in an additional filing fee of \$160 to cover the amendment.
3. BLM can withdraw its protest by referencing the 5-14-21 Draft.

Please review the approval and let me know if you see any errors. If there are no errors or issues identified by next Friday (May 21st), BLM can move forward with its withdrawal of protest.

James Cefalo
Regional Manager
IDWR Eastern Region
(208) 525-7161

From: Jerry Rigby [<mailto:jrigby@rex-law.com>]
Sent: Thursday, May 13, 2021 3:24 PM
To: Randy Budge <randy@racineolson.com>
Cc: MAUGHAN, JASON [AG/1850] <jason.maughan@bayer.com>; Cefalo, James <James.Cefalo@idwr.idaho.gov>; Josh Hanks <watermasterdist11@gmail.com>; Price, Fredric W <fwprice@blm.gov>; Mandy Davis <mdavis@rex-law.com>
Subject: RE: P4 Production, LLC - Farmer's Land & Irrigation Co - IDWR Transfer No. 84061

Randy,
This will also confirm that on behalf of Farmer's Land & Irrigation Co., I concur with your email terms below.
Thanks
Jerry
Jerry R. Rigby
Rigby, Andrus & Rigby Law, PLLC
25 N. 2nd E.

Rexburg, Idaho 83440
208-356-3633

From: Randy Budge <randy@racineolson.com>

Sent: Thursday, May 13, 2021 2:48 PM

To: Jerry Rigby <jrigby@rex-law.com>

Cc: Randy Budge <randy@racineolson.com>; MAUGHAN, JASON [AG/1850] <jason.maughan@bayer.com>; Cefalo, James <James.Cefalo@idwr.idaho.gov>; Josh Hanks <watermasterdist11@gmail.com>; Price, Fredric W <fwprice@blm.gov>

Subject: P4 Production, LLC - Farmer's Land & Irrigation Co - IDWR Transfer No. 84061

Dear Jerry,

This will confirm and follow up our discussions this afternoon during the IDWR status conference on the above matter.

For purposes of the 2021 irrigation season and pending final approval by IDWR of Transfer No. 84051, this will confirm that P4 Production, LLC (P4) temporarily subordinates and agrees not to divert water under its water rights in Soda Creek subject to Transfer No. 84061. These are the rights which P4 leased to Last Chance Canal Co. which were subleased to Farmer's Land & Irrigation Company. As a result, water available under these rights will remain in Soda Creek for diversion in priority by Farmer's Land & Irrigation Co. at its point of diversion.

This will cover all of P4's water rights in Soda Creek, excepting Water Right No. 11-531D for 1.0 CFS leased to the Oregon Trail Golf Course under Transfer No. 5620.

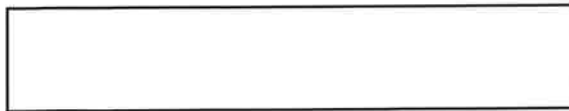
It is our understanding that James Cefalo will prepare and circulate for the parties review and approval a proposed approval of the Transfer with conditions to address and satisfy the BLM protest. The conditions will include a requirement that Farmer's file with BLM an application to secure an additional right of way to transport the P4 rights under the lease.

By copy of this letter I am advising the parties of the foregoing, including watermaster Josh Hanks so he can immediately begin delivery of water accordingly.

Randy

Randall C. Budge

Attorney



201 E. Center Street / P.O. Box 1391
Pocatello, Idaho 83204
(208)232-6101 - Phone
(208)232-6109 - Fax

racineolson.com

CONFIDENTIALITY NOTICE - This email and its attachments may contain information that is confidential, privileged, or

5/13/2021

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	P4 PRODUCTION LLC PO BOX 816 SODA SPRINGS, ID 83276-0816

Status: Active

Tributary
BEAR RIVER

<u>From</u>	<u>To</u>	<u>Diversion Rate</u>
04/15	10/15	0.300 CFS
Total Diversion		0.300 CFS

Volume
49.0 AF
49.0 AF

SODA CREEK

NESW

Sec. 6, Twp 09S, Rge 42E, CARIBOU County

IRRIGATION within CARIBOU County

			NE				NW				SW				SE				
Twp	Rng	Sec	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	Totals
09S	42E	6									31.0	20.0							51.0

Right Acre Limit: 14.0

POU Total Acres: 51.0

1. T08 Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
2. Right No. 11-00448 is limited to irrigation of 14.0 acres in the place of use described above in a single irrigation season.
Right No. 11-00457 is limited to irrigation of 5.0 acres in the place of use described above in a single irrigation season.
Right No. 11-00471 is limited to irrigation of 1.3 acres in the place of use described above in a single irrigation season.
Right No. 11-00499 is limited to irrigation of 30.0 acres in the place of use described above in a single irrigation season.
The right holder shall cease irrigation of 151.0 acres and shall cease the associated diversion of 0.98 cfs and 386.8 afa of waste water previously authorized under Right 11-02106, and shall consolidate use of water on the remaining 51.0 acres as described on this approval.
Rights 11-00448, 11-00457, 11-00471, 11-00499 and 11-02106 when combined shall not exceed a total diversion rate of 1.02 cfs or a total annual maximum diversion volume of 178.5 af at the field headgate from the Soda Creek diversion for the irrigation of 51.0 acres.

IDAHO DEPARTMENT OF WATER RESOURCES
Proof Report

5/13/2021

Prior to the diversion and use of water under Right 11-02106, the right holder shall install and maintain acceptable measuring devices at the point of injection into Soda Creek and at the point of rediversion from Soda Creek.

The period of use for the irrigation described in this approval may be extended to an ending date of 10/31 provided that beneficial use of the water can be shown and other elements of the right are not exceeded. The use of water after 10/15 is subordinate to all water rights having no subordinated late irrigation use and a priority date earlier than the date of this approval.

3. R63 This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 3.5 afa per acre at the field headgate for irrigation of the lands above.
4. R43 The right holder shall maintain a measuring device and lockable controlling works of a type approved by the Department in a manner that will provide the watermaster suitable control of the diversion.
5. T07 The right holder shall accomplish the change authorized by this transfer within one (1) year of the date of this approval.
6. R04 Use of water under this water right will be regulated by the watermaster of State Water District No. &DISTRICT.

5/13/2021

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	P4 PRODUCTION LLC PO BOX 816 SODA SPRINGS, ID 83276-0816

Status: Active

Tributary
BEAR RIVER

<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
IRRIGATION	4/15	10/15	0.100 CFS	17.5 AF
	Total Diversion		0.100 CFS	17.5 AF

Sec. 6, Twp 09S, Rge 42E, CARIBOU County

IRRIGATION within CARIBOU County

			NE				NW				SW				SE				
Twp	Rng	Sec	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	Totals
09S	42E	6									31.0	20.0							51.0

POU Total Acres: 51.0

Conditions of Approval		
1.	T08	Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
2.		Right No. 11-00448 is limited to irrigation of 14.0 acres in the place of use described above in a single irrigation season. Right No. 11-00457 is limited to irrigation of 5.0 acres in the place of use described above in a single irrigation season. Right No. 11-00471 is limited to irrigation of 1.3 acres in the place of use described above in a single irrigation season. Right No. 11-00499 is limited to irrigation of 30.0 acres in the place of use described above in a single irrigation season. The right holder shall cease irrigation of 151.0 acres and shall cease the associated diversion of 0.98 cfs and 386.8 afa of waste water previously authorized under Right 11-02106, and shall consolidate use of water on the remaining 51.0 acres as described on this approval. Rights 11-00448, 11-00457, 11-00471, 11-00499 and 11-02106 when combined shall not exceed a total diversion rate of 1.02 cfs or a total annual maximum diversion volume of 178.5 af at the field headgate from the Soda Creek diversion for the irrigation of 51.0 acres.

IDAHO DEPARTMENT OF WATER RESOURCES
Proof Report

5/13/2021

Prior to the diversion and use of water under Right 11-02106, the right holder shall install and maintain acceptable measuring devices at the point of injection into Soda Creek and at the point of rediversion from Soda Creek.

The period of use for the irrigation described in this approval may be extended to an ending date of 10/31 provided that beneficial use of the water can be shown and other elements of the right are not exceeded. The use of water after 10/15 is subordinate to all water rights having no subordinated late irrigation use and a priority date earlier than the date of this approval.

3. T07 The right holder shall accomplish the change authorized by this transfer within one (1) year of the date of this approval.
4. R43 The right holder shall maintain a measuring device and lockable controlling works of a type approved by the Department in a manner that will provide the watermaster suitable control of the diversion.
5. R04 Use of water under this water right will be regulated by the watermaster of State Water District No. &DISTRICT.
6. R63 This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 3.5 afa per acre at the field headgate for irrigation of the lands above.

IDAHO DEPARTMENT OF WATER RESOURCES
Proof Report

5/13/2021

Water Right 11-471

Owner Type **Name and Address**
Current Owner P4 PRODUCTION LLC
 PO BOX 816
 SODA SPRINGS, ID 83276-0816

Priority Date: 2/10/1881

Basis: Decreed

Status: Active

Source **Tributary**
SODA CREEK BEAR RIVER

Beneficial Use	From	To	Diversion Rate	Volume
IRRIGATION	4/15	10/15	0.020 CFS	4.6 AF
	Total Diversion		0.020 CFS	4.6 AF

Source and Point(s) of Diversion

SODA CREEK NESW Sec. 6, Twp 09S, Rge 42E, CARIBOU County

Place of Use

IRRIGATION within CARIBOU County

			NE				NW				SW				SE				Totals
Twp	Rng	Sec	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
09S	42E	6									31.0	20.0							51.0

Right Acre Limit: 1.3

POU Total Acres: 51.0

Conditions of Approval:

1. R63 This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 3.5 afa per acre at the field headgate for irrigation of the lands above.
2. Right No. 11-00448 is limited to irrigation of 14.0 acres in the place of use described above in a single irrigation season.
Right No. 11-00457 is limited to irrigation of 5.0 acres in the place of use described above in a single irrigation season.
Right No. 11-00471 is limited to irrigation of 1.3 acres in the place of use described above in a single irrigation season.
Right No. 11-00499 is limited to irrigation of 30.0 acres in the place of use described above in a single irrigation season.
The right holder shall cease irrigation of 151.0 acres and shall cease the associated diversion of 0.98 cfs and 386.8 afa of waste water previously authorized under Right 11-02106, and shall consolidate use of water on the remaining 51.0 acres as described on this approval.
Rights 11-00448, 11-00457, 11-00471, 11-00499 and 11-02106 when combined shall not exceed a total diversion rate of 1.02 cfs or a total annual maximum diversion volume of 178.5 af at the field headgate from the Soda Creek diversion for the irrigation

IDAHO DEPARTMENT OF WATER RESOURCES
Proof Report

5/13/2021

of 51.0 acres.

Prior to the diversion and use of water under Right 11-02106, the right holder shall install and maintain acceptable measuring devices at the point of injection into Soda Creek and at the point of rediversion from Soda Creek.

The period of use for the irrigation described in this approval may be extended to an ending date of 10/31 provided that beneficial use of the water can be shown and other elements of the right are not exceeded. The use of water after 10/15 is subordinate to all water rights having no subordinated late irrigation use and a priority date earlier than the date of this approval.

3. R43 The right holder shall maintain a measuring device and lockable controlling works of a type approved by the Department in a manner that will provide the watermaster suitable control of the diversion.
4. T07 The right holder shall accomplish the change authorized by this transfer within one (1) year of the date of this approval.
5. T08 Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
6. R04 Use of water under this water right will be regulated by the watermaster of State Water District No. &DISTRICT.

5/13/2021

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	P4 PRODUCTION LLC PO BOX 816 SODA SPRINGS, ID 83276-0816

Status: Active

Tributary
BEAR RIVER

<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
4/15	10/15	0.600 CFS	105.0 AF
Total Diversion		0.600 CFS	105.0 AF

SODA CREEK NESW Sec. 6, Twp 09S, Rge 42E, CARIBOU County

IRRIGATION within CARIBOU County

			NE				NW				SW				SE				
Twp	Rng	Sec	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	Totals
09S	42E	6									31.0	20.0							51.0

POU Total Acres: 51.0

1. Right No. 11-00448 is limited to irrigation of 14.0 acres in the place of use described above in a single irrigation season.
Right No. 11-00457 is limited to irrigation of 5.0 acres in the place of use described above in a single irrigation season.
Right No. 11-00471 is limited to irrigation of 1.3 acres in the place of use described above in a single irrigation season.
Right No. 11-00499 is limited to irrigation of 30.0 acres in the place of use described above in a single irrigation season.
The right holder shall cease irrigation of 151.0 acres and shall cease the associated diversion of 0.98 cfs and 386.8 afa of waste water previously authorized under Right 11-02106, and shall consolidate use of water on the remaining 51.0 acres as described on this approval.
Rights 11-00448, 11-00457, 11-00471, 11-00499 and 11-02106 when combined shall not exceed a total diversion rate of 1.02 cfs or a total annual maximum diversion volume of 178.5 af at the field headgate from the Soda Creek diversion for the irrigation of 51.0 acres.
Prior to the diversion and use of water under Right 11-02106, the right holder shall install and maintain acceptable measuring devices at the point of injection into Soda

IDAHO DEPARTMENT OF WATER RESOURCES
Proof Report

5/13/2021

Creek and at the point of rediversion from Soda Creek.

The period of use for the irrigation described in this approval may be extended to an ending date of 10/31 provided that beneficial use of the water can be shown and other elements of the right are not exceeded. The use of water after 10/15 is subordinate to all water rights having no subordinated late irrigation use and a priority date earlier than the date of this approval.

2. T08 Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
3. T07 The right holder shall accomplish the change authorized by this transfer within one (1) year of the date of this approval.
4. R43 The right holder shall maintain a measuring device and lockable controlling works of a type approved by the Department in a manner that will provide the watermaster suitable control of the diversion.
5. R04 Use of water under this water right will be regulated by the watermaster of State Water District No. & DISTRICT.
6. R63 This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 3.5 afa per acre at the field headgate for irrigation of the lands above.

5/13/2021

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	P4 PRODUCTION LLC PO BOX 816 SODA SPRINGS, ID 83276-0816

Status: Active

Tributary
SODA CREEK

<u>From</u>	<u>To</u>	<u>Diversion Rate</u>
4/15	10/15	1.020 CFS
Total Diversion		1.020 CFS

Volume
178.5 AF
178.5 AF

WASTE WATER	L4(NWNW)	Sec. 6, Twp 09S, Rge 42E,	CARIBOU County
WASTE WATER	NESW	Sec. 6, Twp 09S, Rge 42E,	CARIBOU County(R)

IRRIGATION within CARIBOU County

			NE				NW				SW				SE				
Twp	Rng	Sec	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	Totals
09S	42E	6									31.0	20.0							51.0

POU Total Acres: 51.0

1. R43 The right holder shall maintain a measuring device and lockable controlling works of a type approved by the Department in a manner that will provide the watermaster suitable control of the diversion.
2. T08 Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
3. Right No. 11-00448 is limited to irrigation of 14.0 acres in the place of use described above in a single irrigation season.
Right No. 11-00457 is limited to irrigation of 5.0 acres in the place of use described above in a single irrigation season.
Right No. 11-00471 is limited to irrigation of 1.3 acres in the place of use described above in a single irrigation season.
Right No. 11-00499 is limited to irrigation of 30.0 acres in the place of use described above in a single irrigation season.
The right holder shall cease irrigation of 151.0 acres and shall cease the associated diversion of 0.98 cfs and 386.8 afa of waste water previously authorized under Right 11-02106, and shall consolidate use of water on the remaining 51.0 acres as described on this approval.
Rights 11-00448, 11-00457, 11-00471, 11-00499 and 11-02106 when combined shall

SCANNED
NOV 01 2022

IDAHO DEPARTMENT OF WATER RESOURCES

5/13/2021

Proof Report

not exceed a total diversion rate of 1.02 cfs or a total annual maximum diversion volume of 178.5 af at the field headgate from the Soda Creek diversion for the irrigation of 51.0 acres.

Prior to the diversion and use of water under Right 11-02106, the right holder shall install and maintain acceptable measuring devices at the point of injection into Soda Creek and at the point of rediversion from Soda Creek.

The period of use for the irrigation described in this approval may be extended to an ending date of 10/31 provided that beneficial use of the water can be shown and other elements of the right are not exceeded. The use of water after 10/15 is subordinate to all water rights having no subordinated late irrigation use and a priority date earlier than the date of this approval.

4. R63 This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 3.5 afa per acre at the field headgate for irrigation of the lands above.
5. T07 The right holder shall accomplish the change authorized by this transfer within one (1) year of the date of this approval.
6. R04 Use of water under this water right will be regulated by the watermaster of State Water District No. &DISTRICT.