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DEPT. OF WATER RESOURCES

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DEPT. OF WATER RESOURCES
EASTERN REGION

Fredric W. Price
Water Rights Specialist
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**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF NOTICE OF)
INSTREAM DIVERSION NO. 34-14955 IN) **PETITION**
THE NAME OF SHIFLETT FAMILY)
MANAGEMENT LLC)
_____)

On September 17, 2024, Shiflett Family Management LLC ("Shiflett") filed an amended *Notice of Diversion as an Alternative to Instream Stockwater Use* ("Notice") with the Idaho Department of Water Resources ("IDWR") pursuant to Idaho Code 42-113(3). On January 30, 2025, BLM received a copy of the *Notice* by email from IDWR.

The *Notice* describes an instream stockwater use along a segment of Corral Creek residing at a point on land owned by the United States and managed by the Bureau of Land Management ("BLM"). The *Notice* identifies owner of the property at the Point of Diversion ("POD") as BLM and located within T09N, R20E, S25, SWNW. This POD resides within the Sage Creek Grazing Allotment (#05710) on BLM land.

BLM has not authorized a POD to be developed on BLM land on Corral Creek, nor the construction of a water conduit across federal land; nor the conveyance of a private water right across federal land. Shiflett attached some grazing allotment documents to the *Notice*; however, a Grazing Permit does not authorize the construction of water developments on federal land.

BLM regulations define that it is a prohibited act for persons “[i]nstalling, using, maintaining, modifying, and/or removing range improvements without authorization. 43 CFR 4140.1(b)(2). In this case, since the proposed development is intended to serve private land, it is not a range improvement. A water development as described in this *Notice* would have to be authorized pursuant to a Right-of-Way (“ROW”). “Until you satisfy your liability for a trespass, BLM will not process any applications you have pending for any activity on BLM-administered lands... In order to correct a trespass, you must apply under the procedures described in subpart 2804 of this part.” 43 CFR 2808.12.

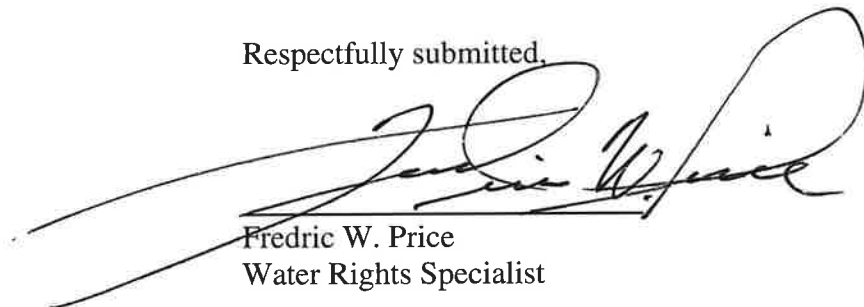
Under state law a water right cannot be established in trespass (see *In Re General Determination of Rights to Use of Surface and Ground Waters of Payette River*, 107 Idaho 221, 687 P.2d 1348, 1353 (1984); *Lemmon v. Hardy*, 95 Idaho 778, 519 P.2d 1168 (1974); *Reed v. Morton*, 480 F.2d 634 (9th Cir. 1973); *Jones v. McIntire*, 60 Idaho 338, 91 P.2d 373 (1939); *Bachman v. Reynolds Irrigation Dist.*, 56 Idaho 507, 55 P.2s 1314 (1936); *Bassett v. Swenson*, 51 Idaho 256, 5 P.2d 722 (1931); *Short v. Praisewater*, 35 Idaho 691, 208 P. 844 (1922); *Rabido v. Furey*, 33 Idaho 56, 190 P. 73 (1920); and *King v. Chamberlin*, 20 Idaho 504, 118 P. 1099 (1911)). Similarly, this *Notice* cannot be established in trespass and therefore the *Notice* should be denied.

The Snake River Basin Adjudication (“SRBA”) Final Unified Decree (“FUD”) includes an *Order Governing Procedures in the SRBA for Adjudication of Deferred De Minimis Domestic and Stock Water Claims* that states: “5. A claimant of a deferred de minimis domestic or stock water right must have the claimed right adjudicated prior to seeking authorization from the Director to change the point of diversion, place of use, purpose of use, or period of use of the claimed right.” This *Notice* seeks a change in point of diversion and place of use (“POU”) of an

deferred de minimis stockwater use that has not been claimed nor adjudicated in the SRBA. The *Notice* was filed with IDWR pursuant to I.C. 42-113(3); however, any such water use must comply with the SRBA FUD and be adjudicated before a change to the use can be made. The *Notice* should be denied as it is not supported by an adjudicated use of water.

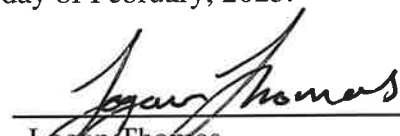
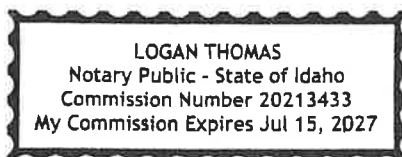
Additionally, there is no evidence that Shiflett has obtained concurrence from the other permittees in this allotment to take water off the allotment. I.C. 42-113(4).

Respectfully submitted,



Fredric W. Price
Water Rights Specialist

Subscribed and sworn to before me this 4rd day of February, 2025.
Witnessed by my hand and official seal.



Logan Thomas
Notary Public in and for the State of Idaho
Residing at: Ada County
My Commission Expires: 07-15-2027

CERTIFICATE OF SERVICE

I HEARBY CERTIFY that on February 4, 2025 I served a true and correct copy of the foregoing **PETITION, NOTICE OF DIVERSION NO. 34-14955** by placing the document in the United States Mail in Boise, Idaho, postage paid, and addressed as follows:

Original to:

Mathew Weaver, Director
Idaho Department of Water Resources
State Office
Water Management Division
P.O. Box 83720
322 East Front Street
Boise, Idaho 83720-0098

Copies to:

Shiflett Family Management LLC
10502 W. Thimbleberry Dr.
Star, Idaho 83669-6279

David P. Hilliard, Assistant Field Manager
U.S.D.I., BLM
Challis Field Office
721 East Main Avenue
Challis, Idaho 83226-9321



Signature of Person Serving Documents