

Shurte, Jan

From: Shelley Davis [smd@idahowaters.com]
Sent: Monday, January 14, 2008 11:55 AM
To: Shurte, Jan; Spencer, Nick
Cc: Shelley Davis; Bruce Castleton
Subject: RE: SRBA Subcase nos. 63-4175 and 63-4176 (AV-CB LLC)

The agreement between Mr. Castleton and myself was to include the remark that we have all agreed to "The source of this right is waste water. The wasting of water may be discontinued at any time." If you have any additional questions, please feel free to call me at 336-0700, or Mr. Castleton at 383-9511.

-Shelley

From: Shurte, Jan [mailto:Jan.Shurte@idwr.idaho.gov]
Sent: Monday, January 14, 2008 10:13 AM
To: Spencer, Nick
Cc: Shelley Davis
Subject: RE: SRBA Subcase nos. 63-4175 and 63-4176 (AV-CB LLC)

Nick – did you ever find out what they wanted as a remark on this one. We did not have a wastewater remark on this one because it was in Part 2. I just need to know if they want different wastewater language or if they want the new language - no problem. Just need to know. I am still assuming they will be pursuing 63-4175 as it is for Ten Mile Creek? Thanks, Jan

From: Spencer, Nick
Sent: Tuesday, January 08, 2008 4:34 PM
To: Shurte, Jan
Cc: Williams, Ray
Subject: FW: SRBA Subcase nos. 63-4175 and 63-4176 (AV-CB LLC)

Jan, if we already have the old wastewater remark on 4176, it looks to me all we should have to do with this one is substitute the new remark. Is my thinking out to lunch? NBS

From: Bruce Castleton [mailto:bjc@naylorhales.com]
Sent: Tuesday, January 08, 2008 4:31 PM
To: Spencer, Nick
Subject: RE: SRBA Subcase nos. 63-4175 and 63-4176 (AV-CB LLC)

Mr. Spencer,

I communicated to Shelly Davis that my client, AV-CB, LLC, is no longer going to oppose the Boise-Kuna Irrigation District's objection in the 63-4176 subcase, that being the one where the IDWR has already designated the water right as wastewater. Will you send whatever paperwork is necessary for a settlement of this subcase?

Thanks,

Bruce
Fax: 383-9511

From: Spencer, Nick [mailto:Nick.Spencer@idwr.idaho.gov]
Sent: Monday, May 07, 2007 4:40 PM

1/14/2008

To: Bruce Castleton

Subject: SRBA Subcase nos. 63-4175 and 63-4176 (AV-CB LLC)

Dear Mr. Castleton: Here is the latest draft of the waste water remark that may resolve a number of objections filed by the irrigation districts to recommendations of rights they contend are using waste water, including possibly Boise-Kuna Irrigation District's objections to your client's two rights. I don't remember if your situation is one where there is an issue regarding whether your client's source is natural flow, or natural flow co-mingled with waste water. If so, no agreement has yet been reached on how to resolve that situation. NBS

-----Original Message-----

From: CHAS [mailto:chas@mcdevitt-miller.com]

Sent: Monday, May 07, 2007 11:14 AM

To: 'Shelley Davis'; Spencer, Nick

Cc: 'Albert Barker'; 'Bryce Farris'; 'Gehlert David (ENRD)'; kmarioncarr@yahoo.com; 'E. Gail McGarry'

Subject: RE: waste water remark

Nick: I likewise sent the same language referenced by Ms. Davis to all persons (or Counsel) with claims to which we (NYID) had objected. cfmc

-----Original Message-----

From: Shelley Davis [mailto:smd@idahowaters.com]

Sent: Friday, May 04, 2007 4:21 PM

To: Spencer Nick

Cc: Albert Barker; CHAS; Bryce Farris; Gehlert David (ENRD); kmarioncarr@yahoo.com; E. Gail McGarry; Shelley Davis

Subject: RE: waste water remark

Nick:

The language that was agreed upon between the BoR and Districts is as follows:

"The source of this right is waste water. The wasting of water may be discontinued at any time."

I think this language comports with the changes that Garrick suggested. I sent a letter to Mr. Creamer and Mr. Lawrence earlier this week containing this proposed language. I hope to hear back from one or both of them before the status conferences on Tuesday, and I will be happy to discuss the situation with them at that time. Aside from issues that Mr. Creamer and his clients may want to take up with me, on behalf of BKID I agree that as between the BoR, Irrigation Districts and the Department there is agreement.

Very Truly Yours,
Shelley M. Davis

Barker Rosholt & Simpson, LLP

From: Spencer, Nick [mailto:Nick.Spencer@idwr.idaho.gov]

Sent: Friday, May 04, 2007 3:56 PM

To: david.gehlert@usdoj.gov; Shelley Davis; chas@mcdevitt-miller.com; bryce@ringertclark.com

Cc: Harvey, Becky

Subject: waste water remark

It is my understanding that when representatives of the three irrigation districts met with representatives of the BOR last week you reached agreement on the following standard waste water remark, for use in

resolving certain of your waste water objections: "The source of this water right is waste water and the wasting of this right may be discontinued at any time." I have forwarded that language to the appropriate managers at IDWR for their review. They do not have a problem with it. Garrick Baxter, the lead adjudication attorney, however, thought that the idea could be expressed a little more precisely if the remark were split into two sentences, as follows: "The source of this water right is waste water. The wasting of waste water may be discontinued at any time." He offers this as a suggested improvement, not as a requirement for IDWR's approval of the remark. Please let me know your thoughts on this suggested change. In any event, unless I hear anything from you to the contrary, I will presume that we can report to the Special Master that there is essential agreement among us on language for those subcases where the pro se claimants have agreed to the inclusion of a standard waste water remark on their water right descriptions, and that I shortly will be able to send that language to those claimants for their review. That leaves, however, the group of subcases where the claimants contend that their right is comingled with natural flow, and the Givens Pursley firm has suggested conditional language to recognize this circumstance. Combining the language proposed by Givens Pursley with the language you are now proposing the remark would read something like as follows: "To the extent that the water from the source described above is waste water, the wasting of it may be discontinued at any time." Have you discussed this situation among yourselves, or reached consensus on language you would propose to address it? Please let me know your thoughts. Thank you. NBS

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR TRANSFER OF WATER RIGHT
PART 2

(Attach one copy for each right)

A. DESCRIPTION OF RIGHT AS RECORDED

1. Right evidenced by:

- a. Decree No. _____ Decreed to _____
 in case of _____ vs. _____
 dated _____ in _____ county of _____
- b. License No. _____ issued by the Idaho Department of Water Resources.
- c. Claim No. 63-4175 on file with the Idaho Department of Water Resources.
- d. Transfer No. _____ which produced this right.

2. Attach a copy of last year's tax notice for the property to which the water right is appurtenant or other documents which show ownership. Label document as attachment A. Check appropriate box below:

☒ Tax Notice ☐ Warranty Deed ☐ Other _____

3. Source of water Ten Mile Creek tributary to Fifteenmile Creek

4. Date of priority 01-03-1929

5. Water is used for the following purpose:

Amount 0.32 for Irrigation purposes from 3-1 to 11-15

(cfs/ac-ft)

Amount _____ for _____ purposes from _____ to _____

(cfs/ac-ft)

Amount _____ for _____ purposes from _____ to _____

(cfs/ac-ft)

6. Total amount of water under right 10.32 cubic feet per second and/or _____ acre-feet per annum.

7. Point(s) of Diversion:

Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion
		SE	SE	4	2N	1E	Ada	

8. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	
2N	1E	4													2.6	11			13.6

Total acres 13.6

9. Describe any other water rights used for the same purpose as described above 63-2388, 63-4176

PART 2 - 63-4175

Transfer No. _____

10. To your knowledge, has any portion of this water right undergone a period of five or more consecutive years of non-use?

No If yes, describe _____

B. DESCRIPTION OF PORTION OF RIGHT BEING TRANSFERRED
(If the entire right is to be changed by the applicant, omit part B and C.)

1. Amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)
Amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)
Amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)

2. Points of Diversion:

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Local name for diversion

3. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	

Total acres _____

C. DESCRIPTION OF UNCHANGED PORTION OF RIGHT *(omit if there is no change)*

1. Amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)
Amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)
Amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)

2. Points of Diversion:

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Local name for diversion

3. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	

Total acres _____

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR TRANSFER OF WATER RIGHT
PART 2
(Attach one copy for each right)

A. DESCRIPTION OF RIGHT AS RECORDED

1. Right evidenced by:

- a. Decree No. _____ Decreed to _____
in case of _____ vs. _____
dated _____ in _____ county of _____
- b. License No. _____ issued by the Idaho Department of Water Resources.
- c. Claim No. 63-4176 on file with the Idaho Department of Water Resources.
- d. Transfer No. _____ which produced this right.

2. Attach a copy of last year's tax notice for the property to which the water right is appurtenant or other documents which show ownership. Label document as attachment A. Check appropriate box below:

☒ Tax Notice ☐ Warranty Deed ☐ Other _____

3. Source of water WASTE WATER tributary to Tenmile Creek

4. Date of priority 03-01-1959

5. Water is used for the following purpose:

Amount 0.27 for Irrigation purposes from 3 -1 to 11-15

(cfs/ac-ft)

Amount _____ for _____ purposes from _____ to _____

(cfs/ac-ft)

Amount _____ for _____ purposes from _____ to _____

(cfs/ac-ft)

6. Total amount of water under right 0.27 cubic feet per second and/or _____ acre-feet per annum.

7. Point(s) of Diversion:

Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion
		NE	SE	4	2N	1E	Ada	

8. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	
2N	1E	4													2.6	11			13.6

Total acres 13.6

9. Describe any other water rights used for the same purpose as described above 63-2388, 63-4175

10. To your knowledge, has any portion of this water right undergone a period of five or more consecutive years of non-use?

No If yes, describe _____

B. DESCRIPTION OF PORTION OF RIGHT BEING TRANSFERRED

(If the entire right is to be changed by the applicant, omit part B and C.)

1. Amount _____ for _____ purposes from _____ to _____

(cfs/ac-ft)

Amount _____ for _____ purposes from _____ to _____

(cfs/ac-ft)

Amount _____ for _____ purposes from _____ to _____

(cfs/ac-ft)

2. Points of Diversion:

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Local name for diversion

3. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	

Total acres _____

C. DESCRIPTION OF UNCHANGED PORTION OF RIGHT (omit if there is no change)

1. Amount _____ for _____ purposes from _____ to _____

(cfs/ac-ft)

Amount _____ for _____ purposes from _____ to _____

(cfs/ac-ft)

Amount _____ for _____ purposes from _____ to _____

(cfs/ac-ft)

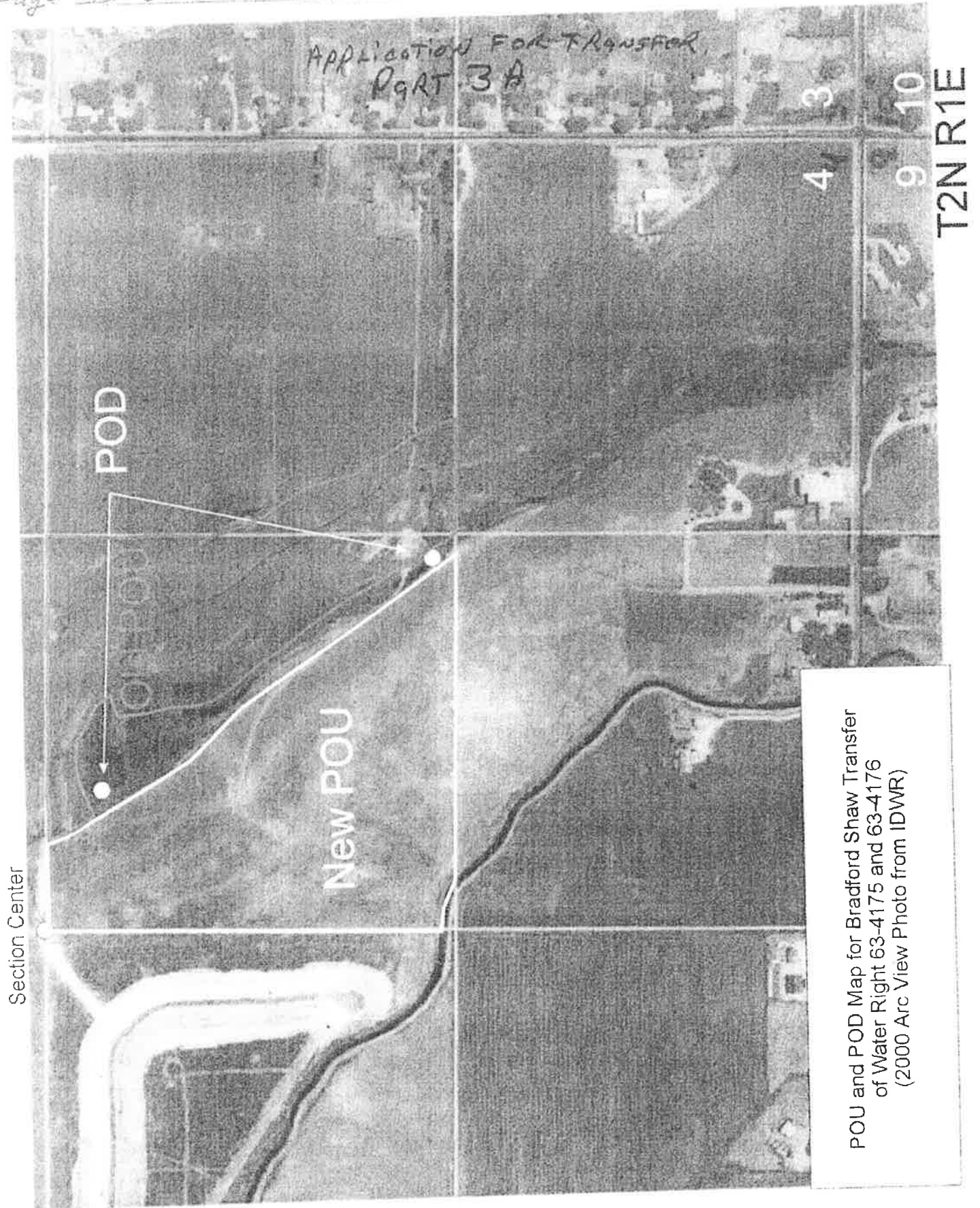
2. Points of Diversion:

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Local name for diversion

3. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	

Total acres _____



PART 3**B. CHANGES IN NATURE OF USE**

1. New Nature of Use _____ Amount (cfs/ac-ft) _____ Hours/days/year _____ Period of Use _____ to _____
 _____ to _____
2. Quantity and quality of return flows and location of discharge: _____
3. Describe effects on other water uses resulting from the proposed change: _____

I hereby assert that no one will be injured by such change and that the change does not constitute an enlargement in use of the original right. The information contained in this application is true to the best of my knowledge. I understand that any willful misrepresentations made in this application may result in voiding its approval.

[Signature] M. Camille Shaw
 (Signature of Applicant)

Subscribed and sworn before me this 16th day of January, 2004

Christina A. Sexton
 (Notary Public)



My commission expires 2-15-06

FOR DEPARTMENT USE ONLY

Transfer contains 8 pages and 1 attachments
 Received by DAN + 2/1/04 Date 1-21-04 Protest filed by _____
 Prelim. check by DAN Fee \$250.00
 Received by DAN FOR KL Date 11-16-03 W02997B
 Published in _____ Copies of protest forwarded by _____
 Pub. Dates _____ Hearing held by _____ Date _____
 Watermaster recommendation requested on _____ Recommended for ☐ approval ☐ denial
 _____ rec'd. _____ by _____
 Copy of transfer sent to lien holder _____