



Macomber Law, PLLC

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April 12, 2011

John Brewster
Fat Bastard Cattle Company, LLC
Fat Bastard Hay Company, LLC
212 W. Ironwood Drive, Suite D, PMB 325
Coeur d'Alene, Idaho 83814

Re: Review of Water Rights Filings for Fat Bastard Cattle Company, LLC and Fat Bastard Hay Company, LLC

Dear Mr. Brewster:

You asked us to review the thirteen (13) Notice of Claim to a Water Right ("Notice") forms that you prepared for your water rights at your ranches in Harrison and Worley, Idaho. We reviewed parcel maps from the Kootenai County Assessor's office to confirm the locations of your properties, points of diversion, and places of use. We reviewed sections of Title 42 of the Idaho Code and the requirements set forth by the Idaho Department of Water Resources (IDWR) to determine whether any legal issues exist with the Notices you provided. We also reviewed the Well Drilling Reports and Water Rights for each of the sections in which your entities own property. There should be fifteen water rights to file, based on your land ownership and the transfers from Blackman that have not been completed. Our review of your Notices is as follows (and each water right filing has the information below attached on a separate page for your alteration of that specific water right prior to filing):

Fat Bastard Hay Company, LLC

Please note that for all the Notices filed, the standard form requires the claimant to state whether or not they own the property. This statement is missing from all of the Notices.

Water Right 95-4274

- I reviewed the Claim to a Water Right Number 95-4274 filed by Floyd L. Blackman on July 8, 1974. Technically, a Change of Ownership form should be completed and submitted with this Notice. However, it is likely that IDWR will accept the Notice of Claim without the Change of Ownership form. In the records for Claim No. 95-4274, there is a letter dated December 2, 1975 stating that the property was being transferred to Hubert and Arlene J. Jenneskens. I recommend submitting a copy of the deeds showing the ownership changes since 1975 to the time Fat Bastard Hay Company acquired the parcel. I have included a copy of these deeds at the back of this Notice.

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MAY 12 2011

- Item 4, Point of Diversion, should include the Parcel Numbers assigned by the Kootenai County Assessors Office, 47N04W331100.
- Item 5 should also describe the diversion works, if any. The former claim stated, "[a]drinking pond was scraped out for the cattle." The Notice needs an aerial photograph or sketch that shows the place of use.

Notice 95-4275

- I reviewed the Claim to a Water Right Number 95-4275 filed by Floyd L. Blackman on July 8, 1974. Technically, a Change of Ownership form should be completed and submitted with this Notice. However, it is likely that IDWR will accept the Notice of Claim without the Change of Ownership form. In the records for Claim No. 95-4275, there is a letter dated December 2, 1975 stating that the property was being transferred to Hubert and Arlene J. Jenneskens. I recommend submitting a copy of the deeds showing the ownership change since 1975 to the time Fat Bastard Hay Company acquired the parcel. I have included a copy of these deeds at the back of this Notice.
- Item 4, Point of Diversion, should include the Parcel Numbers assigned by the Kootenai County Assessors Office, 47N04W345200.
- Item 5 should also describe the diversion works, if any. The former claim stated that the diversion of water was by "Construction concrete watering pond at the spring." The Notice needs an aerial photograph or sketch that shows the place of use.

Water Right 95-4276

- This water right is one of the old Floyd Blackman water rights, but it is used for lands north of Sunny Slopes Road presently owned by Rosie Otilie (PN 47N04W330200) and Richard Dow (PN 47N04W330100). I have given you a copy of the IDWR water right report, but you should not file a Claim to a Water Right for 95-4276.

Water Right 95-4277

- This is another of the Floyd Blackman water rights used on your land, but we did not see a Claim to a Water Right was provided for our review. You can make out a new Claim and make sure it follows the directions you followed before and which we have recommended in the other water rights filings by this letter.
- I have included a package of the extra material you need to add, so all you need to do is fill out the Claim to a Water Right form.

Notice 95-14007

- The location listed in Item 4 on the Notice is the NE ¼ of the SE ¼ of Township 47N, Range 04W, Section 33. Within this quarter section, Fat Bastard Hay Company owns Parcel Number 47N04W337350. The exhibits attached to the Notice are for Parcel Number 47N04W331100, which is located in the SE ¼ of the NE ¼ of Township 47N, Range 04W, Section 33. It is difficult to ascertain from the parcel information at the assessor's office whether there are actually improvements on Parcel Number 7N04W337350. The market value of \$35,851 suggests that it is vacant land. The tax assessor records do not show improvements for these parcels. Thus, I am not sure whether this Notice will be approved by IDWR as written.

- Item 5 should also describe the diversion works such as a well and pumps, if any. The Notice needs an aerial photograph or sketch that shows the place of use.

Notice 95-14008

- Item 4, Point of Diversion, should include the Parcel Numbers assigned by the Kootenai County Assessors Office, 47N04W331100.
- Item 5 should also describe the diversion works, if any. It would be helpful to include an aerial photograph showing the point of use and locations of the structures referenced in the Notice.

Notice 95-14021

- Item 4, Point of Diversion, should include the Parcel Number assigned by the Kootenai County Assessors Office, 47N04W331600.
- Item 5 should also describe the diversion works. The exhibit attached to the Notice includes a satellite image with a well. A description of the well should be included. I did not find a Well Driller's Report for the well on IDWR's website.

Notice 95-14022

- Item 4, Point of Diversion, should include the Parcel Numbers assigned by the Kootenai County Assessors Office, 47N04W345200 and 47N04W346650.
- Item 5 should also describe the diversion works, if any. The Notice needs an aerial photograph or sketch that shows the place of use.

Fat Bastard Cattle Company, LLC

Notice 94-7100

- I reviewed Idaho Fish and Game's Water Right License Number 94-7100. It is my understanding that Idaho Fish and Game has not used this right for at least five years. I recommend proceeding with the Notice of Claim for this water right with the changes recommended below. If Idaho Fish and Game has not used its right, then it is likely it will not protest your claim. I can perform further research and negotiate on your behalf if Idaho Fish and Game does protest your claim. I recommend including as an attachment Fat Bastard Cattle Company's Quit Claim Deed so as to clarify any potential questions of ownership. I have attached a copy of this Quit Claim Deed to this water right.
- A Point of Diversion is listed at the SE ¼ of the NE ¼ of Township 48N, Range 03W, Section 26. Fat Bastard Cattle Co. does not own any property in Section 26, and the former License 94-7100 does not reference a point of diversion in Section 26. Either this should be changed because it is a typographical error or Fat Bastard Cattle Co. should obtain documentation showing that the owner of the underlying property at the point of diversion has an agreement allowing use of the property. There is a Government Lot 1 in Township 48N, Range 03W, Section 36. Thus, it is possible that the any references to Section 26 in the Notice should be changed to Section 36.
- Item 4, Point of Diversion, should include the Parcel Number assigned by the Kootenai County Assessors Office, 48N03W251200.

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- Item 8, Places of Use, several instances of use within Section 26 are found. These uses should be checked per my comments above.
- Item 5 should also describe the diversion works, if any.

Notice 98-7840

- Item 4, Point of Diversion, should include the Parcel Numbers assigned by the Kootenai County Assessors Office, 48N03W251200.
- Item 5 should also describe the diversion works including a description of the well and any associated pumps. I recommend attaching a copy of the Well Driller's Report for Well Number 0039809 to the Notice. For reference, I attached a copy of the Well Driller's Report to this Memorandum.

Notice 98-7841

- There are typographical errors in Item 2: the paragraph should read, "Prior resident Gladdis Jacklyn told current owner (John Brewster) that springs and lake were in use for stockwater purposes when she grew up on homestead. Mrs. Jacklyn said she was born in 1917 and that stock had used springs and lake for several years before she was born."
- Table 1, Recommended Diversion Rates for Stockwater, found on page 5 of the Instructions for Filing Notice of Claim to a Water Right Acquired Under State Law in the General Adjudication of Rights to the Use of Water from the Coeur d'Alene-Spokane River Basin Water System recommends 0.12 cfs for 401 to 500 "other cattle." The quantity claimed in Item 7 was only 0.03 cfs. Thus, I recommend that you increase the quantity claimed per Table 1 if you believe this accurately reflects the amount of water your cattle use.
- Item 4, Point of Diversion, should include the Parcel Numbers assigned by the Kootenai County Assessors Office, 48N03W253200 and 48N03W251200.
- Item 5 should also describe the diversion works, if any.

Notice 94-7842

- Item 4, Point of Diversion, should include the Parcel Numbers assigned by the Kootenai County Assessors Office, 48N03W251200.
- I found the following potential issues in Item 8, Place of Use:
 - Stockwater use is listed for the location of NE ¼ of the NE ¼ of Township 48N, Range 03W, Section 36. I believe that the tax assessor's parcel map shows that this is part of Parcel Number 48N03W360250, which is owned by the Idaho Department of Lands. I confirmed from the Quit Claim Deed referenced above, Fat Bastard Cattle Co. owns Government Lot 1 in Township 48N, Range 03W, Section 36. Therefore, to include this Place of Use on the Notice, Fat Bastard Cattle Co. should include any agreement from the Idaho Department of Lands allowing use of its property as an attachment to the Notice. For reference, I have attached a copy of the Assessor's Office Parcel information for 48N03W360250.
 - There is a Place of Use listed for the SW ¼ of the SE ¼ of Township 48N, Range 03W, Section 25, followed by a Place of Use listed for the SW ¼ of the SE ¼ of Township 48N, Range 03W, Section 25, Government Lot 4. The former listing duplicates the latter listing, and should be deleted.

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- There is a Place of Use listed for the NW ¼ of the NE ¼ of Township 48N, Range 03W, Section 36, followed by a Place of Use listed for the NW ¼ of the SN ¼ of Township 48N, Range 03W, Section 36, Government Lot 1. The former listing duplicates the latter listing, and should be deleted.
- The parcel identification number should be listed for the Place of Use for the SW ¼ of the SW ¼ of Township 48N, Range 02W, Section 30, Government Lot 4 as 48N02W305000. The parcel identification number should be listed for the Place of Use for the NW ¼ of the NW ¼ of Township 48N, Range 03W, Section 36, Government Lot 1 as 48N03W360900.
- Item 5 should also describe the diversion works, if any.

Notice 94-7843

- There is a typographical error in Item 2: "Swann Lake" should be "Swan Lake."
- Item 4, Point of Diversion, should include the Parcel Numbers assigned by the Kootenai County Assessors Office, 48N03W251200 and 48N02W305000.
- Table 1, Recommended Diversion Rates for Stockwater, found on page 5 of the Instructions for Filing Notice of Claim to a Water Right Acquired Under State Law in the General Adjudication of Rights to the Use of Water from the Coeur d'Alene-Spokane River Basin Water System recommends 0.09 cfs for 301 to 400 "other cattle." The quantity claimed in Item 7 was only 0.03 cfs. Thus, I recommend that you increase the quantity claimed per Table 1 if you believe this accurately reflects the amount of water your cattle use.
- Item 8, Place of Use: Stockwater use is listed for the location of SW ¼ of the NE ¼ of Township 48N, Range 02W, Section 30. The tax assessor's parcel map shows that this is Parcel Number 48N02W301400, which is owned by Minnalossa Land Company, LLC. I confirmed that Fat Bastard Cattle Co. does not own Government Lot 6 pursuant to its Quit Claim Deed recorded in Kootenai County on March 26, 2010 using Instrument Number 2258808000. Therefore, to include this Place of Use on the Notice, Fat Bastard Cattle Co. should include any agreement from Minnalossa Land Company, LLC allowing use of its property as an attachment to the Notice. For reference, I have attached a copy of the Assessor's Office Parcel information for 48N02W301400.
- Item 5 should also describe the diversion works, if any.

Notice 94-7844

- There is a typographical error in Item 2: "Gre up" should be "Grew up."
- Table 1, Recommended Diversion Rates for Stockwater, found on page 5 of the Instructions for Filing Notice of Claim to a Water Right Acquired Under State Law in the General Adjudication of Rights to the Use of Water from the Coeur d'Alene-Spokane River Basin Water System recommends 0.09 cfs for 301 to 400 "other cattle." The quantity claimed in Item 7 was only 0.03 cfs. Thus, I recommend that you increase the quantity claimed per Table 1 if you believe this accurately reflects the amount of water your cattle use.
- Item 4, Point of Diversion, should include the Parcel Number assigned by the Kootenai County Assessors Office, 48N02W303400. The point of diversion is listed twice – one of the listings should be deleted.
- Item 5 should also describe the diversion works, if any.

SCANNED
MAY 12 2011

Notice 98-7845

- Table 1, Recommended Diversion Rates for Stockwater, found on page 5 of the Instructions for Filing Notice of Claim to a Water Right Acquired Under State Law in the General Adjudication of Rights to the Use of Water from the Coeur d'Alene-Spokane River Basin Water System recommends 0.09 cfs for 301 to 400 "other cattle." The quantity claimed in Item 7 was only 0.03 cfs. Thus, I recommend that you increase the quantity claimed per Table 1 if you believe this accurately reflects the amount of water your cattle use.
- Item 4, Point of Diversion, should include the Parcel Number assigned by the Kootenai County Assessors Office, 48N03W251200.
- Item 5 should also describe the diversion works, if any. In addition, the parcel numbers for the NW ¼ of the NW ¼, NW ¼ of the SE ¼, SE ¼ of the NE ¼, and SE ¼ of the NW ¼ should be listed as 48N03W253200, 48N03W251200, 48N03W252200, 48N03W251200, and 48N03W251200, respectively.

Notice 94-7847

- Item 4, Point of Diversion, should include the Parcel Number assigned by the Kootenai County Assessors Office, 48N03W251200.
- Item 5 should also describe the diversion works, if any.

Regarding the three other water rights for Floyd Blackman, two of those are apparently on your land, but were not in your list of Notices that you had prepared for our review. These are the water rights numbers 95-4274, 95-4276, and 95-4277 mentioned earlier in this letter. The 95-4274 and 95-4277 are associated with your Worley parcel number 47N04W331100. Water right number 95-4276 is situated in the NE 1/4 of the NE 1/4 of Section 33, Township 47 North, Range 4 West. That quarter-quarter section is owned by Richard Dow at parcel number 47N04W330100, and Rosie Otilie at parcel number 47N04W330200.

You may want to make water rights filings related to 95-4274, and 95-4277, if you are still using those water rights, and the materials we supplied will help you fill out the Claim forms.

Please do not hesitate to contact me if you have any questions regarding my review of your water rights or would like further assistance with these matters.

Sincerely,



Arthur B. Macomber
Attorney at Law

Enc. or Included:

Kootenai Co Record for Idaho Dept of Lands PN 48N03W360250
Water Right No. 95-4276 (Do not file for this, for your records only)
Kootenai Co Record of lands owned by Fat Bastard by parcel number

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MAY 16 2011

Fat Bastard Cattle Company, LLC

Notice 94-7100

- I reviewed Idaho Fish and Game's Water Right License Number 94-7100. It is my understanding that Idaho Fish and Game has not used this right for at least five years. I recommend proceeding with the Notice of Claim for this water right with the changes recommended below. If Idaho Fish and Game has not used its right, then it is likely it will not protest your claim. I can perform further research and negotiate on your behalf if Idaho Fish and Game does protest your claim. I recommend including as an attachment Fat Bastard Cattle Company's Quit Claim Deed so as to clarify any potential questions of ownership. I have attached a copy of this Quit Claim Deed.
- A Point of Diversion is listed at the SE ¼ of the NE ¼ of Township 48N, Range 03W, Section 26. Fat Bastard Cattle Co. does not own any property in Section 26, and the former License 94-7100 does not reference a point of diversion in Section 26. Either this should be changed because it is a typographical error or Fat Bastard Cattle Co. should obtain documentation showing that the owner of the underlying property at the point of diversion has an agreement allowing use of the property. There is a Government Lot 1 in Township 48N, Range 03W, Section 36. Thus, it is possible that the any references to Section 26 in the Notice should be changed to Section 36.
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- Item 8, Places of Use, several instances of use within Section 26 are found. These uses should be checked per my comments above.
- Item 5 should also describe the diversion works, if any.

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Fat Bastard Cattle Company, LLC

Notice 98-7840

- Item 4, Point of Diversion, should include the Parcel Numbers assigned by the Kootenai County Assessors Office, 48N03W251200.
- Item 5 should also describe the diversion works including a description of the well and any associated pumps. I recommend attaching a copy of the Well Driller's Report for Well Number 0039809 to the Notice. For reference, I attached a copy of the Well Driller's Report to this Memorandum.

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Fat Bastard Cattle Company, LLC

Notice 98-7841

- There are typographical errors in Item 2: the paragraph should read, "Prior resident Gladdis Jacklyn told current owner (John Brewster) that springs and lake were in use for stockwater purposes when she grew up on homestead. Mrs. Jacklyn said she was born in 1917 and that stock had used springs and lake for several years before she was born."
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- Item 4, Point of Diversion, should include the Parcel Numbers assigned by the Kootenai County Assessors Office, 48N03W253200 and 48N03W251200.
- Item 5 should also describe the diversion works, if any.

Cattle Co.

#98-7841

New water Right #
will be assigned

Fer \$25

SCANNED
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MAY 12 2011

Fat Bastard Cattle Company, LLC

Notice 94-7842

- Item 4, Point of Diversion, should include the Parcel Numbers assigned by the Kootenai County Assessors Office, 48N03W251200.
- I found the following potential issues in **Item 8, Place of Use**:
 - Stockwater use is listed for the location of NE ¼ of the NE ¼ of Township 48N, Range 03W, Section 36. I believe that the tax assessor's parcel map shows that this is part of Parcel Number 48N03W360250, which is owned by the Idaho Department of Lands. I confirmed from the Quit Claim Deed referenced above, Fat Bastard Cattle Co. owns Government Lot 1 in Township 48N, Range 03W, Section 36. Therefore, to include this Place of Use on the Notice, Fat Bastard Cattle Co. should include any agreement from the Idaho Department of Lands allowing use of its property as an attachment to the Notice. For reference, I have attached a copy of the Assessor's Office Parcel information for 48N03W360250.
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- Item 5 should also describe the diversion works, if any.

No Agreement
w/ Id Dept. of Lands

SCANNED
MAY 10 2011

Fat Bastard Cattle Company, LLC

Notice 94-7843

- There is a typographical error in Item 2: "Swann Lake" should be "Swan Lake."
- Item 4, Point of Diversion, should include the Parcel Numbers assigned by the Kootenai County Assessors Office, 48N03W251200 and 48N02W305000.
- Table 1, Recommended Diversion Rates for Stockwater, found on page 5 of the Instructions for Filing Notice of Claim to a Water Right Acquired Under State Law in the General Adjudication of Rights to the Use of Water from the Coeur d'Alene-Spokane River Basin Water System recommends 0.09 cfs for 301 to 400 "other cattle." The quantity claimed in Item 7 was only 0.03 cfs. Thus, I recommend that you increase the quantity claimed per Table 1 if you believe this accurately reflects the amount of water your cattle use.
- Item 8, Place of Use: Stockwater use is listed for the location of SW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Township 48N, Range 02W, Section 30. The tax assessor's parcel map shows that this is Parcel Number 48N02W301400, which is owned by Minnaloosa Land Company, LLC. I confirmed that Fat Bastard Cattle Co. does not own Government Lot 6 pursuant to its Quit Claim Deed recorded in Kootenai County on March 26, 2010 using Instrument Number 2258808000. Therefore, to include this Place of Use on the Notice, Fat Bastard Cattle Co. should include any agreement from Minnaloosa Land Company, LLC allowing use of its property as an attachment to the Notice. For reference, I have attached a copy of the Assessor's Office Parcel information for 48N02W301400.
- Item 5 should also describe the diversion works, if any.

No Agreement

Cattle Co.

#94-7843

New W.R. to be
assigned
\$25 fee

SCANNED
MAY 12 2011

Fat Bastard Cattle Company, LLC

Notice 94-7844

- There is a typographical error in Item 2: "Gre up" should be "Grew up."
- Table 1, Recommended Diversion Rates for Stockwater, found on page 5 of the Instructions for Filing Notice of Claim to a Water Right Acquired Under State Law in the General Adjudication of Rights to the Use of Water from the Coeur d'Alene-Spokane River Basin Water System recommends 0.09 cfs for 301 to 400 "other cattle." The quantity claimed in Item 7 was only 0.03 cfs. Thus, I recommend that you increase the quantity claimed per Table 1 if you believe this accurately reflects the amount of water your cattle use.
- Item 4, Point of Diversion, should include the Parcel Number assigned by the Kootenai County Assessors Office, 48N02W303400. The point of diversion is listed twice – one of the listings should be deleted.
- Item 5 should also describe the diversion works, if any.

need to measure Pond
Surface Area + Avg. Depth
Cattle Co.
#94-7844
New w.r. to be
assigned
Claim Filing Fee \$25
as is. More if
storage

Fat Bastard Cattle Company. LLC

Notice 98-7845

- Table 1, Recommended Diversion Rates for Stockwater, found on page 5 of the Instructions for Filing Notice of Claim to a Water Right Acquired Under State Law in the General Adjudication of Rights to the Use of Water from the Coeur d'Alene-Spokane River Basin Water System recommends 0.09 cfs for 301 to 400 "other cattle." The quantity claimed in Item 7 was only 0.03 cfs. Thus, I recommend that you increase the quantity claimed per Table 1 if you believe this accurately reflects the amount of water your cattle use.
- Item 4, Point of Diversion, should include the Parcel Number assigned by the Kootenai County Assessors Office, 48N03W251200.
- Item 5 should also describe the diversion works, if any. In addition, the parcel numbers for the NW ¼ of the NW ¼, NW ¼ of the SE ¼, SE ¼ of the NE ¼, and SE ¼ of the NW ¼ should be listed as 48N03W253200, 48N03W251200, 48N03W252200, 48N03W251200, and 48N03W251200, respectively.

Cattle Co.

#⁹⁴98-7845

New W.R. will be assigned
claim Filing Fee
\$25

SCANNED
MAY 12 2011
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Fat Bastard Cattle Company. LLC

Notice 94-7847

- Item 4, Point of Diversion, should include the Parcel Number assigned by the Kootenai County Assessors Office, 48N03W251200.
- Item 5 should also describe the diversion works, if any.

Corrected form —
see Attachment?

C.Y.A.? →
FAT BASTARD
NEEDS TO PROVIDE A
DESCRIPTION OF DIVERSION WORKS →