

MEMO

TO: IDWR File for Water Rights 29-2500 and 29-2506

FROM: James Cefalo

DATE: May 24, 2022

RE: Error in Previous Ownership Change

In February 2022, Dustin Brown filed a Notice of Change in Water Right Ownership, proposing to update the ownership records for an eight-acre split portion of water rights 29-2500 and 29-2506. Brown provided copies of deeds that had not been previously provided to the Department. Given the information contained in those deeds, I have determined that there were errors in the ownership records for water rights 29-2500 and 29-2506. This memo is intended to summarize the ownership history of water rights 29-2500 and 29-2506 and describe the changes needed to make the Departments records match the historical conveyance documents.

The Department of Water Administration (predecessor to the Department of Water Resources) issued licenses for water rights 29-2500 and 29-2506 on January 24, 1972. Water right 29-2500 described irrigated acres in the NWNE and SWNE of Section 28, T11S, R37E. Max Nielsen was the licensed owner of record. Water right 29-2506 described irrigated acres in the NE1/4 and NW1/4 of Section 28. Max and JoAnn Nielsen were the licensed owners of record. Max and JoAnn Nielsen filed claims for water rights 29-2500 and 29-2506 in the Snake River Basin Adjudication (SRBA).

The SRBA Court issued partial decrees for water rights 29-2500 and 29-2506 on March 22, 2004. The rights described a 215-acre place of use in Section 28, T11S, R37E. Max and JoAnn Nielsen were the decreed owners of record.

On March 11, 1994, Max and JoAnn Nielsen executed a Warranty Deed (Instrument No. 94004348), conveying property to J. Max Jones and Diane Jones. The conveyed property included a portion of the authorized place of use for water rights 29-2500 and 29-2506. The Department has not been provided a copy of the deed from Nielsen to Jones for the remainder of the authorized place of use. Based on subsequent deeds, however, it appears that Nielsen conveyed the entire place of use for water rights 29-2500 and 29-2506 to Jones.

On July 13, 2001, J. Max Jones and Diane D. Jones executed two Warranty Deeds (Instrument Nos. 20113629 and 20113630), conveying property to Larry Cooper and Barbara Jean Cooper. The conveyed property included the entire place of use for water rights 29-2500 and 29-2506.

On July 29, 2004, Larry Cooper and Barbara Jean Cooper executed a Warranty Deed (Instrument No. 20416247), conveying property to Justin Lefor. The deed was recorded in Bannock County on July 30, 2004. The conveyed property included an eight-acre portion of the authorized place of use for water rights 29-2500 and 29-2506. The deed from Cooper to Lefor did not exclude or reserve any water rights. The property conveyed by Cooper to Lefor has been conveyed multiple times since 2004 and is currently owned by Dustin Brown.

On November 17, 2004, Larry Cooper and Barbara Jean Cooper executed a Warranty Deed (Instrument No. 20424852), conveying property to Lynn Bastian and Christine Bastian. The deed was recorded in Bannock County on November 18, 2004. The deed included most of the authorized place of use for water rights 29-2500 and 29-2506, but specifically excluded the land that had been previously conveyed by Larry and Barbara Cooper to Justin Lefor. The deed from Cooper to Bastian also excluded a parcel in the NWNE of Section 29, T11S, R37E, that contained one acre of the authorized place of use for water right 29-2500 and 29-2506.

The 2004 Warranty Deed from Cooper to Lefor predated and was recorded before the 2004 Warranty Deed from Cooper to Bastian. On November 22, 2004, Lynn and Christine Bastian filed a Notice of Change in Water Right Ownership, seeking to update the ownership records for water rights 29-2500 and 29-2506. The Department employee reviewing the ownership change did not have a copy of the Deed from Cooper to Lefor and did not catch the exclusions in the deed from Cooper to Bastian. Therefore, the Department changed its records to show Lynn and Christine Bastian as the owners of the entirety of water rights 29-2500 and 29-2506. In January 2021, Lynn and Christine Bastian conveyed their property to Trevor and Amy Barnes. Barnes filed a Notice of Change in Water Right ownership in February 2021. The agent reviewing the ownership change, did not catch the exclusion in the deed. Consequently, the Department's records were updated to show Trevor and Amy Barnes as the owners of the entirety of water rights 29-2500 and 29-2506.

The Department now has a more-complete record of the conveyance documents for the authorized place of use for water rights 29-2500 and 29-2506. Considering the new information available to the Department, I have determined that water rights 29-2500 and 29-2506 should have been split as part of the Lynn and Christine Bastian ownership change. Bastian demonstrated ownership of all but nine acres of the authorized place of use. Therefore, Trevor and Amy Barnes are the current owners of all but nine acres of the authorized place of use. Dustin Brown is the current owner of eight acres of the authorized place of use. One acre of the authorized place of use will remain in the name of the decreed owners (Max and JoAnn Nielsen). The current owner of this property has not yet filed a Notice of Change in Water Right Ownership.

The Departments water right records were updated to show Trevor and Amy Barnes as the current owners of water rights 29-2500 and 29-2506 (206 acres), Dustin Brown as the current owner of water rights 29-14472 and 29-14474 (8 acres), and Max and JoAnn Nielsen as the current owners of water rights 29-14473 and 29-14475 (1 acre).