

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

RECEIVED

MAY 23 2019

Department of Water Resources
Eastern Region

Notice of Change in Water Right Ownership

1. List the numbers of all water rights and/or adjudication claim records to be changed. If you only acquired a portion of the water right or adjudication claim, check "Yes" in the "Split?" column. If the water right is leased to the Water Supply Bank, check "Yes". If you are not sure if the water right is leased to the Water Supply Bank, see #6 of the instructions.

Water Right/Claim No.	Split?	Leased to Water Supply Bank?	Water Right/Claim No.	Split?	Leased to Water Supply Bank?
13-53-A	Yes <input checked="" type="checkbox"/>	Yes <input type="checkbox"/>		Yes <input type="checkbox"/>	Yes <input type="checkbox"/>
	Yes <input type="checkbox"/>	Yes <input type="checkbox"/>		Yes <input type="checkbox"/>	Yes <input type="checkbox"/>
	Yes <input type="checkbox"/>	Yes <input type="checkbox"/>		Yes <input type="checkbox"/>	Yes <input type="checkbox"/>
	Yes <input type="checkbox"/>	Yes <input type="checkbox"/>		Yes <input type="checkbox"/>	Yes <input type="checkbox"/>
	Yes <input type="checkbox"/>	Yes <input type="checkbox"/>		Yes <input type="checkbox"/>	Yes <input type="checkbox"/>

2. Previous Owner's Name: Joseph Chatterton / Elizabeth Chatterton / James G. Lowe / W.B. Gibson
Name of current water right holder/claimant

3. New Owner(s)/Claimant(s): Chatterton Land & Livestock LLC / Steven B. Chatterton
New owner(s) as listed on the conveyance document Name connector ☐ and ☐ or ☐ and/or

5703 E Maple Creek Road Franklin ID 83237
Mailing address City State ZIP

home 1-208-417-1323 dustyrdchatt@gmail.com
Telephone Steve Cell - 208-406-7915 Email dgchatt@gmail.com
208-406-7926

4. If the water rights and/or adjudication claims were split, how did the division occur? in 1905 1/4 1/4 1/4
☒ The water rights or claims were divided as specifically identified in a deed, contract, or other conveyance document.
☐ The water rights or claims were divided proportionately based on the portion of their place(s) of use acquired by the new owner.

5. Date you acquired the water rights and/or claims listed above: 7-31-1995

6. If the water right is leased to the Water Supply Bank changing ownership of a water right will reassign to the new owner any Water Supply Bank leases associated with the water right. Payment of revenue generated from any rental of a leased water right requires a completed IRS Form W-9 for payment to be issued to an owner. A new owner for a water right under lease shall supply a W-9. Water rights with multiple owners must specify a designated lessor, using a completed Lessor Designation form. Beginning in the calendar year following an acknowledged change in water right ownership, compensation for any rental will go to the new owner(s).

7. This form must be signed and submitted with the following **REQUIRED** items:

- ☐ A copy of the conveyance document – warranty deed, quitclaim deed, court decree, contract of sale, etc. The conveyance document must include a legal description of the property or description of the water right(s) if no land is conveyed.
☐ Plat map, survey map or aerial photograph which clearly shows the place of use and point of diversion for each water right and/or claim listed above (if necessary to clarify division of water rights or complex property descriptions).
☐ Filing fee (see instructions for further explanation):
 o \$25 per *undivided* water right.
 o \$100 per *split* water right.
 o No fee is required for pending adjudication claims.
☐ If water right(s) are leased to the Water Supply Bank AND there are multiple owners, a Lessor Designation form is required.
☐ If water right(s) are leased to the Water Supply Bank, the individual owner or designated lessor must complete, sign and submit an IRS Form W-9.

8. Signature: Steven B Chatterton member 4-16-19
Signature of new owner/claimant Title, if applicable Date
Signature: Debra Lee Chatterton member 4-16-2019
Signature of new owner/claimant Title, if applicable Date

For IDWR Office Use Only:

Received by mf Date 8-23-19 Receipt No. E045013 Referred Amt. 100.00

Active in the Water Supply Bank? Yes ☐ No ☐ If yes, forward to the State Office for processing W-9 received? Yes ☐ No ☐

Name on W-9 _____ Approved by _____ Processed by _____ Date _____



State of Idaho

DEPARTMENT OF WATER RESOURCES

Eastern Region • 900 N Skyline Drive, Suite A • Idaho Falls ID 83402-1718

Phone: (208) 525-7161 • Fax: (208) 525-7177

Website: idwr.idaho.gov • Email: easterninfo@idwr.idaho.gov

BRAD LITTLE
Governor

GARY SPACKMAN
Director

March 17, 2020

Chatterton Land & Livestock
5203 E Maple Creek Road
Franklin, ID 83237

G & G Franklin Properties LLC
3427 Overland Avenue
Burley, ID 83318

Rallison Family Trust
5228 E Maple Creek Road
Franklin, ID 83237

RE: Notices of Change in Water Right Ownership
Water Right 13-53 (Deep Canyon Creek)

Dear Water Users:

On April 5, 2018, G&G Franklin Properties LLC ("G&G") filed a Notice of Change in Water Right Ownership ("ownership change"), proposing to update the ownership records for a portion of water right 13-53. On May 23, 2019, Chatterton Land & Livestock LLC ("Chatterton") and Rallison Family Trust ("Rallison") filed separate ownership changes proposing to update the ownership records for portions of water right 13-53. This letter is meant to notify you that I have decided to return all three of the ownership changes and refund the associated filing fees. A refund check from the state should arrive in a couple of weeks. As described below, the Department is unable to complete the ownership changes in the manner requested by Chatterton and Rallison. Further, G&G has never provided historical deeds or other conveyance documents to support its ownership change.

Water right 13-53 was described in a decree issued in 1905 (*Flack v. Franklin Maple Creek Pioneer Irrigation Company*). The 1905 Decree identified the following elements for water right 13-53:

Priority Date: 1883
Source: Deep Canyon Creek
Diversion Rate: 11.40 cfs
Point of Diversion: Not defined
Owners: Joseph Chatterton
E.M. (Elizabeth) Chatterton
James G. Lowe
W.B. Gibson

Place of Use: 440 acres

80 acres S1/2 of the SW1/4, Section 13, T16S, R40E (Joseph Chatterton)

80 acres W1/2 of the SE1/4, Section 14, T16S, R40E (E.M. Chatterton)

40 acres SWNE, Section 14, T16S, R40E (Lowe)

240 acres Parts of Sections 11, 12, 13 and 14, T16S, R40E (Gibson)

Condition: Water "to be equally divided among them, share and share alike"

In 2018, I organized a meeting with the water users on Deep Canyon Creek to see if the group could come to an agreement about how water right 13-53 should be configured and how water right 13-53 should be divided. If the current owners of the subject properties were able to reach an agreement about the ownership division and the proper place of use, then the water right could be updated accordingly.

Unfortunately, the group was not able to reach a consensus about dividing the water right. In the absence of an agreement, the Department is bound by the existing elements of the water right and the relevant historical deeds.

Debbie Chatterton has spent numerous hours collecting deeds for the subject properties and tracing the ownership of the subject properties from the decreed owners to the current owners. Debbie has kindly provided a copy of her work to the Department to support the Chatterton and Rallison ownership changes.

In October 2019, after carefully reviewing the deeds provided by Chatterton and Rallison, I prepared a draft memo describing how water right 13-53 would be divided given the decreed elements of the water right and the provisions of the relevant deeds. Prior to completing the ownership changes for Chatterton and Rallison, I sent a copy of the draft memo to Chatterton.

On March 13, 2020, I received a letter from Chatterton, expressing concerns with water right division proposed in the draft memo. Chatterton asserts that the 1905 Decree was incomplete and did not accurately describe how water right 13-53 has been historically used. According to Chatterton, James Lowe used his share of the water right to irrigate 120 acres, even though the 1905 Decree only described 40 irrigated acres for James Lowe. Similarly, Chatterton asserts that Elizabeth Chatterton and Joseph Chatterton each irrigated 120 acres, even though the decree only described 80 irrigated acres for each of these individuals. Further, Chatterton asserts that some of the Sections associated with the Gibson portion of the water right (located on the G&G property) have never been irrigated with water from Deep Canyon Creek.

Idaho Code § 42-248 describes the role of the Department in updating the ownership records for water rights. Section 42-248 does not grant the Department the authority to change or expand the elements of a water right as part of an ownership change. The Department can only divide a water right as it is currently defined. Any proposal to change the elements of a water right (for example, to change the place of use) must be accomplished through an Application for Transfer (Idaho Code § 42-222). In this case, in the absence of a private agreement dividing the water right and a

transfer rearranging the place of use, the Department is bound by the elements set forth in the 1905 Decree and the relevant historical deeds.

The proposed division described in the draft memo is based on the elements set forth in the 1905 Decree and the historical deeds for the subject properties. According to the letter from Chatterton, the proposed water right division is not acceptable. If Chatterton believes water right 13-53 should be divided based on historical use, they have a couple of options. Chatterton could initiate a quiet title action in district court, asking a judge to quiet title for its portions of water right 13-53. A district court judge has the authority to declare a person the owner of a water right, even if the water right is not currently appurtenant to that person's land. Or, Chatterton could pursue claims for a portion of water right 13-53 in a general adjudication. An adjudication claim could describe whatever portion of water right 13-53 Chatterton believes it owns. An adjudication court has the authority to quiet title to water rights. The legislature and governor recently approved the Bear River Basin Adjudication. It is still unclear when the adjudication will be funded or when claims can be filed.

I know this letter will likely come as a disappointment for you. Debbie Chatterton, in particular, has spent a significant amount of time researching the history of water right 13-53. Unfortunately, the water right division proposed by Chatterton requires the Department to ignore certain elements of water right 13-53 as set forth in the 1905 Decree. I hope that the time spent on reviewing deeds has not been wasted. The information collected and organized may still be used in a quiet title action or may be used to support a claim in the adjudication process. Please feel free to contact me if you have any questions.

Sincerely,

A handwritten signature in dark ink, appearing to read 'J. Cefalo', with a stylized, cursive script.

James Cefalo

Encl: Returned Notices

Cc: Luke Marchant, Holden Kidwell Hahn & Crapo (w/o encl)

Barg, Jonie

From: Barg, Jonie
Sent: Monday, March 16, 2020 4:15 PM
To: Marston, Sascha; Pline, Treva
Subject: Refund Request
Attachments: Receipt(1)

Treva & Sascha,

Good afternoon!!

I have a refund request as follows:

Receipt number: E045013
Amount: \$100.00
Payable to: Lewiston State Bank
C/O Chatterton Land & Livestock
5203 E Maple Creek
Franklin ID 83237

Reason: Total filing fee received \$100.00 for an ownership change in a Water Right. We did not receive sufficient evidence to update ownership. Therefore the applicant is entitled to a full refund (\$100.00).

Let me know if you need additional information.

Thank you so much for your time. Let me know if you have any questions.

Have a great day!!!

Jonie Barg

Jonie Barg
Technical Records Specialist
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