



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region • 2735 W Airport Way • Boise ID 83705-5082

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BRAD LITTLE
Governor

GARY SPACKMAN
Director

March 5, 2019

ANDREW J. WALDERA
SAWTOOTH LAW OFFICE, PLLC
PO BOX 7985
BOISE ID 83707

RE: Water Right Nos. 61-252C and 61-10033A

Dear Mr. Waldera:

I have reviewed your letter of July 31, 2017 that you forwarded me recently. I apologize that the original letter was misplaced and it has taken so much time for the department to respond. As you note in your letter, there is an ongoing dispute over the ownership of the two subject water rights between your client Ted Hoffman, and his neighbor Pam Warthen. The purpose of your letter was to provide documentation that would settle the dispute and allow the department to update its records to reflect appropriate ownership of the two rights.

The history of these rights is not straightforward and the legal ownership of the right is in question. The SRBA Court decreed the rights to Tindall a year after Hoffman purchased the property he now claims the rights were appurtenant to. Warthen asserts a claim to ownership because the rights have continuously been used on her property, and so are appurtenant to her property. Tindall, or rather his estate, has disclaimed any interest in the rights, but did not suggest Tindall conveyed the rights to Hoffman or anyone else.

After reviewing the available information, the department concludes that insufficient evidence exists to support changing the department's ownership records in the manner you have requested. In a situation like this, where there is a dispute over title to real property, the matter should be resolved by a quiet title action brought before a district court. *See* Idaho Code § 6-401; *see also Rural Kootenai Org., Inc. v. Bd. of Comm'rs*, 133 Idaho 833, 842, 993 P.2d 596, 605 (1999)(Kootenai County Board of Commissioners lacks jurisdiction to determine who owns title to submerged lands.); *see also Boner Bldg. Supply, Inc. v. Standard Forest Products, Inc.*, 106 Idaho 682, 685, 682 P.2d 635, 638 (Ct. App. 1984)(A district court has jurisdiction in action to quiet title.).

The heart of the dispute here deals with the disputed title to two water rights. As such, district court is the appropriate venue for Mr. Hoffman to bring his claim of ownership of the water rights because district courts are vested with the authority to determine attributes of ownership. However, your letter provides a good compendium of relevant information and the

department will place the documents you provided in the respective water right files, along with documents it has received from Warthen, to help in documenting the history of the dispute.

If you have further questions regarding this matter, please feel free to write or call me.

Sincerely,

A handwritten signature in black ink, appearing to read 'Nick Miller', with a stylized, cursive script.

Nick Miller
Manager, IDWR Western Region
208-334-2190
Nick.Miller@IDWR.Idaho.gov

Cc:

Pam Warthen – 7061 Canyon Creek RD Mountain Home, ID 83647