



State of Idaho

DEPARTMENT OF WATER RESOURCES

Eastern Region • 900 North Skyline Drive, Suite A • Idaho Falls, ID 83402-1718
Phone: (208) 525-7161 • Fax: (208) 525-7177 • Website: www.idwr.idaho.gov

C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

May 10, 2017

Rob Harris
Holden Kidwell Hahn & Crapo, PLLC
1000 Riverwalk Drive, Suite 200
PO Box 50130
Idaho Falls, ID 83405

RE: Returning Ownership Change

Dear Rob:

In August 2016, you filed a Notice of Change in Water Right Ownership on behalf of Henrys Lake Overlook Property Owners Association, Inc, ("HLO") seeking to update the ownership records for water right 21-4061. Water right 21-4061 authorizes the diversion of 0.04 cfs from springs for domestic use. The current owner of record for water right 21-4061 is American Classic Development, LLC ("ACD"). Attached to your ownership change was a Grant Deed dated June 22, 2012 from ACD to HLO for Lot 3 and Lot 20, Block 1 of the Henrys Lake Overlook Subdivision.

On March 7, 2017, I sent you an email explaining that the Grant Deed was not sufficient to demonstrate ownership of the right and requesting additional evidence. According to aerial photos and a map provided by ACD in 2006, water right 21-4061 is for domestic use at a home located in Lot 1, Block 1 of the Henrys Lake Overlook Subdivision. A deed provided by ACD, dated April 11, 2006, confirms that ACD owned the land now designated as Lot 1, Block 1 at that time. According to Fremont County taxlot records, Lot 1, Block 1 is currently owned by David and Patricia Harwell. In order to update ownership of water right 21-4061, HLO must provide evidence that the right was conveyed by ACD to HLO prior to ACD's sale of Lot 1, Block 1, or, that ACD withheld the right from the sale of Lot 1, Block 1 and subsequently conveyed the right to HLO. It is also possible for HLO to have David & Patricia Harwell convey water right 21-4061 to HLO.

Rather than continue to hold the ownership change, I am returning it to you and refunding the filing fee to allow you more time to collect evidence of ownership. A copy of the original receipt and the request for refund is also enclosed with this letter. Feel free to refile the ownership change when the documents supporting ownership are collected.

Sincerely,

James Cefalo

Receipt Details for ID E042402

Status	Adjustment Type	Version
		1

General Information:				
Date Received	Date Deposited	Region	Total Amount	Payment Type
8/29/2016 12:03:11 PM	8/29/2016 3:18:16 PM	EASTERN	\$25.00	Check
Payee:	Holden Kidwell Hahn & Crapo PLLC			

Account Information	
Check Number	55213

Comment 21-4061 ownership change for Henry's Lake Overklook Property Owners Association Inc.

Fee Details

Amount	Description	PCA	Fund	Fund Detail	Subsidiary	Object
\$25.00	OWNERSHIP CHANGES/SECURITY INTERESTS	63140	0229	21		1155

Cox, Sharla

From: Cox, Sharla
Sent: Wednesday, May 10, 2017 11:27 AM
To: Carlos, Rhea
Subject: Refund Please

Can you please refund the following:

Receipt #E042402
Amount of Refund: \$25.00
Payable to:
Holden Kidwell Hahn & Crapo
PO Box 50130
Idaho Falls ID 83405-0130

Reason for refund: Returning Ownership due to lack of supporting documents.

Thank you.

Sharla

*Sharla Cox
Administrative Assistant
Idaho Dept of Water Resources
900 N Skyline Dr. Ste A.
Idaho Falls ID 83402
sharla.cox@idwr.idaho.gov
208-525-7161 phone
208-525-7177 fax*

Cefalo, James

From: Cefalo, James
Sent: Tuesday, March 07, 2017 3:51 PM
To: 'Rob Harris'
Subject: Henrys Lake Overlook Ownership Change (21-4061)

Rob,

In August 2016, you filed an ownership change notice on behalf of Henrys Lake Overlook POA ("HLO"), seeking to update the ownership records for water right 21-4061. The file was recently passed on to me to bring the proposed change to a final resolution. There are handwritten notes in the file referring to emails sent to you asking for additional information. I don't have a copy of those emails, so I apologize if my request for information duplicates previous requests.

A partial decree for water right 21-4061 was issued by the SRBA Court in 1999. The owner of record at that time was Clarence Sherwood. Water right 21-4061 describes domestic use from a spring for one home. In 2006, the Department updated ownership of the right to American Classic Development, LLC ("ACD"). ACD was able to trace ownership back to Clarence Sherwood. The ownership change filed by ACD included a map showing the entire property owned by ACD and identifying the home associated with water right 21-4061. The lot which includes the home is currently designated as Lot 1, Block 1, Henrys Lake Overlook Division #1.

The ownership change filed by you in August 2016, included a Grant Deed from ACD to HLO for Lots 3 and 20, Block 1, Henrys Lake Overlook Subdivision. This deed is of limited value in determining the ownership of water right 21-4061.

Your cover letter included with the ownership change included the following statement: "Water Right No. 21-4061 is a domestic water right, and therefore, its place of use is an entire quarter-quarter section." This statement is not correct. The domestic use authorized under water right 21-4061 is within the NWSE of Section 33, but does not include the entire quarter-quarter. The actual place of use is the area immediately adjacent to the one home described in the water right. At the time of the adjudication, for efficiency purposes, IDWR created nominal map shapes for domestic rights which often included the entire quarter-quarter. The map shape does not mean the domestic use covered the entire 40 acre tract. I've updated our map to reflect the actual place of use identified in the original statutory claim and identified on the map provided by ACD.

In order to update ownership of water right 21-4061, you need to provide the deed conveying Lot 1, Block 1 from ACD to the subsequent owner. If the water right was withheld from that conveyance, HLO would then need to demonstrate that ACD conveyed water right 21-4061 to HLO. The deed for Lots 3 and 20 is not sufficient to demonstrate conveyance of water right 21-4061 (because the water right is associated with Lot 1, Block 1). If HLO is able to demonstrate ownership of the water right, HLO should move the water right off of the home located in Lot 1, Block 1 to another location. If the proposed place of use is located outside of the NWSE of Section 33, a transfer application should be filed.

Please provide the documents described above, if they exist, in the next 30 days and I will complete the ownership change. If the documents don't exist, please let me know and I will have Jonie return the ownership change notice and refund the filing fee.

James Cefalo
Water Resources Program Manager
IDWR Eastern Region
(208) 525-7161



Holden Kidwell
Hahn & Crapo P.L.L.C.
LAW OFFICES

RECEIVED

AUG 29 2016

Department of Water Resources
Eastern Region

1000 Riverwalk Drive, Suite 200
PO Box 50130
Idaho Falls Idaho 83405

Tel: (208) 523-0620
Fax: (208) 523-9518
www.holdenlegal.com

Email: rharris@holdenlegal.com

August 25, 2016

Jonie Barg
Idaho Department of Water Resources
900 N. Skyline Drive, Suite A
Idaho Falls, ID 83402-1718

**RE: Notice of Change of Water Right Ownership for Water Right No. 21-4061
Filed By Henry's Lake Overlook Property Owners Association, Inc.**

Dear Jonie:

Enclosed for processing is a *Notice of Change in Water Right Ownership* for Water Right No. 21-4061. This water right is associated with a subdivision known as Henry's Lake Overlook. This particular water right was in the name of the prior developer, American Classic Development, LLC. Protective covenants for the subdivision were recorded as Instrument No. 512233 in the records of Fremont County, and I have included a copy for your reference. Of particular importance is Section 6 on page 8 of the covenants, which provides that no surface irrigation water rights "will be issued with, sold to or provided for any of the lots to be subdivided." Accordingly, even though some of the lots have been sold to private owners, none of the surface water rights associated with the subdivision were to be conveyed. Water Right No. 21-4061 is a surface water right, and was therefore retained by the developer.

American Classic Development, LLC eventually became a victim of the housing crash in 2007 and 2008. The subdivision was eventually taken over by the homeowners association, and they are working through numerous issues left unaddressed by the prior developer, including title to the common areas. We have included a *Grant Deed* recorded on August 27, 2012 wherein American Classic Development, LLC conveyed to Henry's Lake Overlook Property Owners Association, Inc. the common area lots within the subdivision. Water Right No. 21-4061 is a domestic water right, and therefore, its place of use is an entire quarter-quarter section. However, because the association provides culinary water to its lot owners, our position is that conveyance of the common areas to the association included a conveyance of all of the appurtenances associated with the entire development, including this particular water right. Accordingly, we request that the ownership of Water Right No. 21-4061 be updated and describe Henry's Lake Overlook Property Owners Association, Inc. as the owner of the water right.

We have enclosed the required filing fee of \$25.00. We have not included a map because the water right will not be split, but if you should need one, please let me know.

Established in 1896

Jonie Barg
Idaho Department of Water Resources
August 25, 2016
Page 2 of 2

We appreciate your attention to this matter. Please let me know if you have any questions.

Best Regards,



Robert L. Harris
Holden, Kidwell, Hahn & Crapo, P.L.L.C.

Enclosures

G:\WPDATA\RLH\7626-001 Henry's Lake Overlook\2016-08-25_Barg.docx

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

RECEIVED

AUG 29 2016

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?
21-4061	Yes ☐	Yes ☐		Yes ☐	Yes ☐
	Yes ☐	Yes ☐		Yes ☐	Yes ☐
	Yes ☐	Yes ☐		Yes ☐	Yes ☐
	Yes ☐	Yes ☐		Yes ☐	Yes ☐
	Yes ☐	Yes ☐		Yes ☐	Yes ☐

2. Previous Owner's Name: American Classic Development LLC
 Name of current water right holder/claimant

3. New Owner(s)/Claimant(s): Henry's Lake Overlook Property Owners Association, Inc.
 New owner(s) as listed on the conveyance document Name connector ☐ and ☐ or ☐ and/or

PO Box 171	Macks Inn	ID	83433
Mailing address	City	State	ZIP
(650) 391-3772	pres@hloipid.com		
Telephone	Email		

4. If the water rights and/or adjudication claims were split, how did the division occur?
☐ 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: June 22, 2012

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):
 - ☐ \$25 per *undivided* water right.
 - ☐ \$100 per *split* water right.
 - ☐ 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: <u>Robert L. Harris</u> | <u>Attorney</u> | <u>August 25, 2016</u> |
| Signature of new owner/claimant | Title, if applicable | Date |
| Signature: _____ | _____ | _____ |
| Signature of new owner/claimant | Title, if applicable | Date |

For IDWR Office Use Only:

Received by JB Date 8/29/2016 Receipt No. E042402 Receipt Amt. \$25. -
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 _____

Close

IDAHO DEPARTMENT OF WATER RESOURCES
Water Right Report

8/25/2016

WATER RIGHT NO. 21-4061

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	AMERICAN CLASSIC DEVELOPMENT LLC 2734 W RASMUSSEN RD PARK CITY, UT 84098 (801) 660-0798
Original Owner	CLARENCE SHERWOOD 371 HYDE POCATELLO, ID 83201 (208)233-3130

Priority Date: 03/01/1904

Basis: Decreed

Status: Active

<u>Source</u>	<u>Tributary</u>
SPRINGS	HATCHERY CREEK

<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
DOMESTIC	1/01	12/31	0.04 CFS	
Total Diversion			0.04 CFS	

Location of Point(s) of Diversion:

SPRINGS|NWSE|Sec. 33|Township 16N|Range 43E|FREMONT County

Place(s) of use:

Place of Use Legal Description: DOMESTIC FREMONT County

Township|Range|Section|Lot|Tract|Acres|Lot|Tract|Acres|Lot|Tract|Acres|Lot|Tract|Acres

Conditions of Approval:

1. N13 THE QUANTITY OF WATER UNDER THIS RIGHT SHALL NOT EXCEED 13,000 GALLONS PER DAY.
2. N11 THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT IS NOT A DETERMINATION OF HISTORICAL BENEFICIAL USE.
3. PARCEL NO. LR0068A

Dates:
 Licensed Date:
 Decreed Date: 08/27/1999
 Enlargement Use Priority Date:
 Enlargement Statute Priority Date:
 Water Supply Bank Enrollment Date Accepted:
 Water Supply Bank Enrollment Date Removed:
 Application Received Date:
 Protest Deadline Date:
 Number of Protests: 0

Other Information:
 State or Federal: S
 Owner Name Connector: AND/OR
 Water District Number:
 Generic Max Rate per Acre:
 Generic Max Volume per Acre:
 Civil Case Number:
 Old Case Number:
 Decree Plaintiff:
 Decree Defendant:
 Swan Falls Trust or Nontrust:
 Swan Falls Dismissed:
 DLE Act Number:
 Cary Act Number:
 Mitigation Plan: False

Close

No. C 195055		Due no later than Jun 30, 2016 Annual Report Form		2. Registered Agent and Address (NO PO BOX)			
Return to: SECRETARY OF STATE 700 WEST JEFFERSON PO BOX 83720 BOISE, ID 83720-0080 NO FILING FEE IF RECEIVED BY DUE DATE		1. Mailing Address: Correct in this box if needed HENRY'S LAKE OVERLOOK PROPERTY OWNERS ASSOCIATION, INC. TRAVIS STEWART 2496 BLUE CANYON CT IDAHO FALLS ID 83402		TRAVIS STEWART 2496 BLUE CANYON CT IDAHO FALLS ID 83402			
				3. <u>New</u> Registered Agent Signature:*			
4. Corporations: Enter Names and Business Addresses of President, Secretary, and Directors. Treasurer (optional).							
Office Held	Name	Street or PO Address	City	State	Country	Postal Code	
SECRETARY	NANCY VOLLMER	2496 BLUE CANYON CT	IDAHO FALLS	ID	USA	83402	
PRESIDENT	TRAVIS STEWART	665 MONTE ROSA DR UNIT 922	MENLO PARK	CA	USA	94025	
VICE PRESIDENT	HARRY KINGTON	5101 E SUNNYSIDE DR	SCOTTSDALE	AZ	USA	85254	
TREASURER	DENIS VOLLMER	2496 BLUE CANYON CT	IDAHO FALLS	ID	USA	83402	
5. Organized Under the Laws of: ID C 195055		6. Annual Report must be signed.* Signature: Denis T Vollmer Name (type or print): Denis T Vollmer Date: 04/24/2016 Title: Treasurer					
Processed 04/24/2016		* Electronically provided signatures are accepted as original signatures.					

GRANT DEED

THIS INDENTURE is made this 22 day of June, 2012, by AMERICAN CLASSIC DEVELOPMENT, LLC, an Utah limited liability, the "Grantor", to HENRY'S LAKE OVERLOOK PROPERTY OWNERS ASSOCIATION, INC., whose mailing address is P.O. Box 171, Macks Inn, Idaho 83433, the "Grantee".

WITNESSETH, that the Grantor, for and in consideration of the sum of Ten Dollars (\$10.00) lawful money of the United States of America, and other good and valuable consideration, to the Grantor in hand paid by the Grantee, the receipt whereof is hereby acknowledged, has granted, and by these presents does grant and confirm unto the Grantee, and to Grantee's successors and assigns forever, all of the following described real property in the County of Fremont, State of Idaho, to-wit:

LOT 3 AND LOT 20, BLOCK 1, HENRY'S LAKE OVERLOOK DIVISION
NO. 1, FREMONT COUNTY, IDAHO, AS SHOWN ON THE PLAT
RECORDED JUNE 29, 2007, AS INSTRUMENT NO. 510806.

SUBJECT to all real property taxes and assessments, all existing patent reservations, easements, rights of way, restrictive covenants and matters of record, all applicable zoning ordinances, building codes, laws and regulations, and all encroachments, overlaps, boundary line disputes, claims of easements and other matters that would be disclosed by an accurate survey or inspection of the property.

TOGETHER with the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and any reversions, remainders, rents, issues and profits therefrom; and all estate, right, title and interest in and to said property, as well in law as in equity, of the Grantor.

TO HAVE AND TO HOLD, the property and the appurtenances unto the Grantee, and to Grantee's successors and assigns forever.

In construing this deed and where the context so requires, the singular includes the plural.

IN WITNESS WHEREOF, the Grantor has executed the within instrument the day and year first above written.

GRANTOR:

AMERICAN CLASSIC DEVELOPMENT, LLC,
a Utah limited liability company

By: [Signature]
Nathan T. Martini, Member

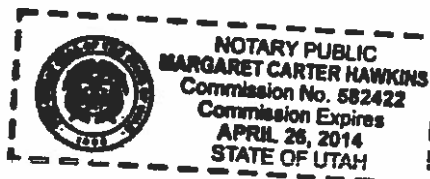
By: [Signature]
Steven K. Martini, Member

STATE OF Utah)
County of Davis)ss.

On the 5th day of July, 2012, before me, the undersigned, a notary public in and for said State, personally appeared Nathan T. Martini, known or identified to me to be a Member of the limited liability company, American Classic Development, LLC, that executed the instrument or the person who executed the instrument on behalf of the company, and acknowledged to me that such company executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

[Signature]
Notary Public for State of Utah
Residing at Bountiful Utah
My Commission Expires: April 26, 2014



540049

STATE OF Texas)
County of Denton) ss.

On the 22nd day of June, 2012, before me, the undersigned, a notary public in and for said State, personally appeared Steven K. Martini, known or identified to me to be a Member of the limited liability company, American Classic Development, LLC, that executed the instrument or the person who executed the instrument on behalf of the company, and acknowledged to me that such company executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.



Ashlee Kratochvil
Notary Public for Texas
Residing at Denton County
My Commission Expires: 01/27/14

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