



State of Idaho

DEPARTMENT OF WATER RESOURCES

900 North Skyline Drive, Suite A Idaho Falls Idaho 83402-1718

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C.L. "BUTCH" OTTER - Governor
Gary Spackman - IDWR Director

October 24, 2016

Jacob A Watterson
Olson & Hoggan, P.C.
130 South Main, Suite 200
PO Box 525
Logan, UT 84323-0525

RE: Proposed Ownership Change for Water Right 13-4284

Dear Mr. Watterson:

Thank you for your letter regarding the Notice of Change in Water Right Ownership filed earlier this year on behalf of Boyd and Beverly Campbell. You have clearly spent a lot of time researching Idaho water law. This letter is intended to return the proposed ownership change and explain why the change cannot be completed at this time.

On June 29, 1984, Jay Norman Fannesbeck filed Claim No. 13-4284 with the Idaho Department of Water Resources ("department"). The claim described the diversion of 5.96 cfs from Black Canyon Creek for domestic and irrigation use.

The place of use described in the claim was 296 acres, generally located in Sections 16 and 21, T16S, R38E. Of particular importance for your clients, the claim described 26 irrigated acres in the SWSE and SESE of Section 16, T16S, R38E. The map filed with the claim also showed approximately 26 irrigated acres in the SWSE and SESE of Section 16. The 26 acres in question were located on property now owned by your clients, Boyd and Beverly Campbell.

On January 11, 2016 you filed a Notice of Change in Water Right Ownership for the Campbells, seeking to update the ownership for a 26-acre portion of water right (claim) 13-4284. The proposed ownership change included two deeds: (1) A 1980 warranty deed from Marlyn and Donna Mickelsen to Paul and Shelly Campbell, and (2) A 2005 warranty deed from Paul and Shelly Campbell to Boyd and Beverly Campbell. Both deeds describe a parcel of ground (hereinafter "Campbell property") which includes most of the SWSE and SESE of Section 16, T16S, R38E and encompasses the 26 acres of water right 13-4284 identified in the paragraph above.

It is important to note that both deeds include the following language: "Together with 1/3 of decreed water rights." The only decreed water rights associated with the Campbell property are water rights held by Weston Creek Irrigation Company ("WCIC"). The Campbell property is located within the authorized service area of WCIC. Of

course, that does not guarantee there are shares from the company associated with the property. The Campbells should contact WCIC to determine if there are any shares associated with their property. The department does not have record of any other decreed rights associated with the Campbell property.

The evidence provided with the proposed ownership change in January 2016 was not sufficient to complete the proposed change. In order to update the ownership of a portion of water right 13-4284, the Campbells must demonstrate a chain of legal ownership of the right tracing back to Jay Norman Fannesbeck, which may be impossible. It appears that in 1984, when Fannesbeck filed his claim, the Campbell property was not even owned by Fannesbeck. Fannesbeck should have limited his claim to his own property and allowed the owners of the Campbell property to file their own independent claim.

Department staff have conversed with you about the issues described above and have allowed you time to collect additional evidence. Your latest letter included a number of additional documents. However, none of the documents establish the required link of water right ownership between the Campbells and Fannesbeck.

On February 3, 2016, Jay Norman Fannesbeck filed a Corrected Claim to a Water Right pursuant to Idaho Code §§ 42-243 and 42-244. The corrected claim rearranged the irrigation place of use. Irrigated acres under water right 13-4284 were removed entirely from the Campbell property.

Idaho Code § 42-244 describes the process for correcting statutory claims. Section 42-244 states that statutory claims "may be corrected by the claimant only by filing of an amended claim in the same form as the original, which shall be recorded and numbered by the department the same as the original, and for which no additional filing fees shall be required."

The department has a very limited role in handling a corrected claim. The department is only authorized to record and number the claim. We are not authorized to conduct any review of the corrected claim. The department is not allowed to investigate ownership of the existing or corrected place of use or the legitimacy of the error to be corrected. In other words, the department is simply required to record and number corrected claims, regardless of their ultimate validity. In this case, the department followed the correct procedure outlined in Idaho Code § 42-244.

Idaho Code § 42-244 states that any person dissatisfied with a claim or wishing to contest the elements of a claim may file exceptions against the claim at any time. These exceptions are maintained in the water right file and become part of the record if the claim is ever pursued in an adjudication. The Campbells are free to file exceptions to any of the elements listed in Fannesbeck's claim, including the irrigation place of use.

To summarize, the department can only complete the proposed ownership change if the Campbells are able to establish a chain of ownership tracing back to the current water right owner, Jay Norman Fannesbeck. It does not appear that the Campbells can make this showing. At this time there is not sufficient evidence to

complete the proposed ownership change regardless of the Corrected Claim filed by Fonnesbeck. Therefore, I am returning the proposed ownership change and refunding the filing fee. You are free to re-file the ownership change if additional evidence comes available in the future.

As a practical matter, please keep in mind that water right 13-4284 continues to be a merely statutory claim. It has never been examined or verified by the department or a district court. It may or may not be a valid water right. The fact that the corrected claim filed by Fonnesbeck no longer includes the Campbell property, does not diminish the Campbell's rights in any way. If the Campbells believe there is an unrecorded beneficial water right associated with their property, they are free to file their own claim pursuant to Idaho Code § 42-243. The Campbells are also free to forgo filing a statutory claim and wait to pursue a claim in a general adjudication. Ultimately, if an adjudication commences in the Bear River basin, Fonnesbeck and the Campbells will bear the burden of supporting their respective claims with evidence of priority and historical beneficial use.

I recognize that this outcome does not satisfy any of the demands made in your latest letter. I am confident, however, that the department has reached the correct outcome and has followed the relevant provisions of the Idaho Code. I am happy to discuss the matter in greater detail if you have any other questions.

Sincerely,

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

Encl: Original Notice of Change in Water Right Ownership
Email requesting reimbursement

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

RECEIVED

JAN 11 2016

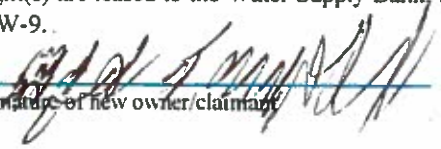
Department of Water Resources
Eastern Region

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?
13-4284	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: Jay N. Fonnesbeck
Name of current water right holder/claimant
3. New Owner(s)/Claimant(s): Boyd O. Campbell and Beverly C. Campbell
New owner(s) as listed on the conveyance document Name connector ☒ and ☐ or ☐ and/or
- 1241 South Hidden View Drive Providence UT 84332
Mailing address City State ZIP
- (435) 881-0172 _____
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: December 19, 2005
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:  Title, if applicable: _____ Date: 12/19/2005

Signature: _____ Title, if applicable: _____ Date: _____

For IDWR Office Use Only:

Received by: JB Date: 1/11/2015 Receipt No. E041740 Receipt Amt. \$100.-

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: _____

Address on check: Olson & Hoggan P.C. 130 S Main Ste 200 PO Box 525
Logan UT 84321

Cox, Sharla

From: Cox, Sharla
Sent: Monday, October 24, 2016 9:22 AM
To: Carlos, Rhea
Subject: Refund Please

Please refund the following:

Receipt # E041740
Amount of Refund: \$100.00
Payable to: Olson & Hoggan PC
130 S Main Ste 200
PO Box 525
Logan UT 84321

Reason: Change of Ownership, lack of evidence, cannot process change of ownership.

Thank you,

Sharla

*Sharla Cox
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