

## Fawcett, Trish

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**From:** Baxter, Garrick  
**Sent:** Thursday, April 07, 2016 3:23 PM  
**To:** Paul Arrington; Chris Bromley; Jones, Doug  
**Cc:** Fawcett, Trish; Barker, Albert (IWRB Member)  
**Subject:** RE: Belle Ranch & First Security Corporation Water Rights originally decreed as South County Estates LLC

Paul,

If someone queries information regarding ownership, the Department's database will say "See file." It will not refer to South County Estates, LLC.

Yes, this email discussion will be included in the file.

Garrick Baxter  
Deputy Attorney General  
Idaho Department of Water Resources  
322 East Front Street  
PO Box 83720  
Boise, Idaho 83720-0098  
garrick.baxter@idwr.idaho.gov  
Phone: (208) 287-4811  
Fax: (208) 287-6700

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**From:** Paul Arrington [mailto:pla@idahowaters.com]  
**Sent:** Thursday, April 07, 2016 2:33 PM  
**To:** Baxter, Garrick; Chris Bromley; Jones, Doug  
**Cc:** Fawcett, Trish; Barker, Albert (IWRB Member)  
**Subject:** RE: Belle Ranch & First Security Corporation Water Rights originally decreed as South County Estates LLC

Thank you Garrick.

A few questions for clarity. John's email indicated that the 7.5/289 would be put back in the name of South County Estates. Is that still going to happen?

Also, will you include this email discussion in the file?

Thanks,

Paul L. Arrington  
Barker Rosholt & Simpson, LLP  
208-733-0700 – Office  
208-404-9436 – Cell  
208-735-2444 – Fax

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**From:** Baxter, Garrick [<mailto:Garrick.Baxter@idwr.idaho.gov>]  
**Sent:** Thursday, April 07, 2016 2:29 PM  
**To:** Chris Bromley <[cbromley@mchughbromley.com](mailto:cbromley@mchughbromley.com)>; Paul Arrington <[pla@idahowaters.com](mailto:pla@idahowaters.com)>; Jones, Doug <[Doug.Jones@idwr.idaho.gov](mailto:Doug.Jones@idwr.idaho.gov)>  
**Cc:** Fawcett, Trish <[Trish.Fawcett@idwr.idaho.gov](mailto:Trish.Fawcett@idwr.idaho.gov)>; Albert Barker <[apb@idahowaters.com](mailto:apb@idahowaters.com)>  
**Subject:** RE: Belle Ranch & First Security Corporation Water Rights originally decreed as South County Estates LLC

Chris and Paul,

Thank you for your letters and emails. As John indicated in his previous email, the Department does not have the authority to determine ownership of water rights. The Department only maintains notices of change of ownership submitted to it. The appropriate forum to resolve a dispute over ownership is a district court. Your letters and emails make it clear that the ownership of the 7.5/289<sup>th</sup> portion the water rights is in dispute. The Department takes no position as to this dispute. I have recommended to the Department that it update its files to include the recent letters and emails regarding the ownership dispute. I have also recommended that the Department's database refer to the files if someone queries information regarding ownership. Should this ownership dispute be resolved by a district court, please provide the Department with a copy of the judgment and the Department will gladly update the records to reflect the finding of the court.

Garrick Baxter  
Deputy Attorney General  
Idaho Department of Water Resources  
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Fax: (208) 287-6700

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**From:** Chris Bromley [<mailto:cbromley@mchughbromley.com>]  
**Sent:** Wednesday, April 06, 2016 9:32 AM  
**To:** 'Paul Arrington'; Baxter, Garrick; Jones, Doug; Homan, John  
**Cc:** Fawcett, Trish; 'Kurt Gustavel'; Barker, Albert (IWRB Member)  
**Subject:** RE: Belle Ranch & First Security Corporation Water Rights originally decreed as South County Estates LLC

All,

Again, as I stated in my email, its purpose was to clear up factual inaccuracies in a brief manner, which I did. IIB disputes the inferences and conclusions drawn by Mr. Arrington.

Thank you,

Chris

**From:** Paul Arrington [<mailto:pla@idahowaters.com>]

**Sent:** Wednesday, April 6, 2016 9:24 AM

**To:** Chris Bromley <[cbromley@mchughbromley.com](mailto:cbromley@mchughbromley.com)>; 'Baxter, Garrick' <[Garrick.Baxter@idwr.idaho.gov](mailto:Garrick.Baxter@idwr.idaho.gov)>; 'Jones, Doug' <[Doug.Jones@idwr.idaho.gov](mailto:Doug.Jones@idwr.idaho.gov)>; 'Homan, John' <[John.Homan@idwr.idaho.gov](mailto:John.Homan@idwr.idaho.gov)>

**Cc:** 'Fawcett, Trish' <[Trish.Fawcett@idwr.idaho.gov](mailto:Trish.Fawcett@idwr.idaho.gov)>; 'Kurt Gustavel' <[Kurt.Gustavel@IIBK.NET](mailto:Kurt.Gustavel@IIBK.NET)>; Albert Barker <[apb@idahowaters.com](mailto:apb@idahowaters.com)>; Paul Arrington <[pla@idahowaters.com](mailto:pla@idahowaters.com)>

**Subject:** RE: Belle Ranch & First Security Corporation Water Rights originally decreed as South County Estates LLC

All just a few comments.

First, Mr. Bromley misquotes my letter as to the recording status of the 2009 Deed. In that letter, I did not state that the deed was “not recorded.” Rather, the letter states that the deed was “not recorded *so that it appeared in the chain of title for the appurtenant property.*” Importantly, Mr. Bromley does not dispute that the 2009 was not recorded in the chain of title for the Property.

Second, although Mr. Bromley underlines some portions of the language from the Partial Release, he does not dispute that there is no reference to any conveyance of the water rights to Mr. Scherer in the Release.

Finally, there is no dispute that the IIB Notice of Security Interest was not included in the water right backfile until 2014.

Thanks,

Paul L. Arrington

Barker Rosholt & Simpson, LLP

208-733-0700 – Office

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**From:** Chris Bromley [<mailto:cbromley@mchughbromley.com>]

**Sent:** Wednesday, April 06, 2016 9:12 AM

**To:** Paul Arrington <[pla@idahowaters.com](mailto:pla@idahowaters.com)>; 'Baxter, Garrick' <[Garrick.Baxter@idwr.idaho.gov](mailto:Garrick.Baxter@idwr.idaho.gov)>; 'Jones, Doug' <[Doug.Jones@idwr.idaho.gov](mailto:Doug.Jones@idwr.idaho.gov)>; 'Homan, John' <[John.Homan@idwr.idaho.gov](mailto:John.Homan@idwr.idaho.gov)>

**Cc:** 'Fawcett, Trish' <[Trish.Fawcett@idwr.idaho.gov](mailto:Trish.Fawcett@idwr.idaho.gov)>; 'Kurt Gustavel' <[Kurt.Gustavel@IIBK.NET](mailto:Kurt.Gustavel@IIBK.NET)>; Albert Barker <[apb@idahowaters.com](mailto:apb@idahowaters.com)>

**Subject:** RE: Belle Ranch & First Security Corporation Water Rights originally decreed as South County Estates LLC

All,

This brief email is intended to clear up some factual inaccuracies in Mr. Arrington's letter of April 5, 2015 ("Letter").

1. Mr. Arrington claims on page 1 of his Letter that the quitclaim deed included as Exhibit 1 to my December 22, 2014 Letter ("2009 Quitclaim Deed") was “not recorded.” That is completely inaccurate. The 2009 Quitclaim

Deed was clearly recorded in Blaine County as Instrument # 568680, dated 6-25-2009, at 04:04:00. The recording stamp is clearly evidenced in the top left hand corner of the deed.

2. On page 2 of his Letter, Mr. Arrington claims the 6/25/2009 Mountain West Bank Partial Release of Lien ("MWB Partial Release"), which was included as Exhibit 2 to my December 22, 2014 Letter, "says nothing about any water right conveyance . . . ." Again, this is inaccurate. The MWB Partial Release "agrees that the lien of the Mortgage be released as it relates to the Water Rights appurtenant to the 7.5 acres of real property identified on the legal description attached hereto as Exhibit 'A' and incorporated herein by reference and that the Notice of Security Interest in a Water Right filed with the Idaho Department of Water Resources be waived to the limited extent it relates to the Water Rights described above." Emphasis added.
3. As to Idaho Independent Bank's ("IIB") Notice of Security Interest ("IIB Security Interest"), which was included as Exhibit 4 to my December 22, 2014 Letter, Mr. Arrington states on page 3 of his Letter, that it was "allegedly submitted to the Department in 2009 by IIB." There's nothing alleged about the IIB Security Interest being filed with IDWR. Much like ignoring the recording stamp in the top left hand corner of the 2009 Quitclaim Deed, the IIB Security Interest was stamped received by IDWR Southern Region on July 24, 2009.

Thank you,

Chris M. Bromley

M<sup>CHUGH</sup>BROMLEY  
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**From:** Paul Arrington [<mailto:pla@idahowaters.com>]  
**Sent:** Tuesday, April 5, 2016 4:36 PM  
**To:** Chris Bromley <[cbromley@mchughbromley.com](mailto:cbromley@mchughbromley.com)>; 'Baxter, Garrick' <[Garrick.Baxter@idwr.idaho.gov](mailto:Garrick.Baxter@idwr.idaho.gov)>; 'Jones, Doug' <[Doug.Jones@idwr.idaho.gov](mailto:Doug.Jones@idwr.idaho.gov)>; 'Homan, John' <[John.Homan@idwr.idaho.gov](mailto:John.Homan@idwr.idaho.gov)>  
**Cc:** 'Fawcett, Trish' <[Trish.Fawcett@idwr.idaho.gov](mailto:Trish.Fawcett@idwr.idaho.gov)>; 'Kurt Gustavel' <[Kurt.Gustavel@IIBK.NET](mailto:Kurt.Gustavel@IIBK.NET)>; Albert Barker <[apb@idahowaters.com](mailto:apb@idahowaters.com)>; Paul Arrington <[pla@idahowaters.com](mailto:pla@idahowaters.com)>  
**Subject:** RE: Belle Ranch & First Security Corporation Water Rights originally decreed as South County Estates LLC

All:

Please find, attached, a letter in response to Mr. Bromley's March 31, 2016 letter.

Thanks,

Paul L. Arrington

Barker Rosholt & Simpson, LLP

208-733-0700 – Office

208-404-9436 – Cell

208-735-2444 – Fax

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**From:** Chris Bromley [<mailto:cbromley@mchughbromley.com>]

**Sent:** Thursday, March 31, 2016 12:32 PM

**To:** 'Baxter, Garrick' <[Garrick.Baxter@idwr.idaho.gov](mailto:Garrick.Baxter@idwr.idaho.gov)>; 'Jones, Doug' <[Doug.Jones@idwr.idaho.gov](mailto:Doug.Jones@idwr.idaho.gov)>; 'Homan, John' <[John.Homan@idwr.idaho.gov](mailto:John.Homan@idwr.idaho.gov)>; Paul Arrington <[pla@idahowaters.com](mailto:pla@idahowaters.com)>

**Cc:** 'Fawcett, Trish' <[Trish.Fawcett@idwr.idaho.gov](mailto:Trish.Fawcett@idwr.idaho.gov)>; 'Kurt Gustavel' <[Kurt.Gustavel@IIBK.NET](mailto:Kurt.Gustavel@IIBK.NET)>

**Subject:** RE: Belle Ranch & First Security Corporation Water Rights originally decreed as South County Estates LLC

All,

Please find attached a letter in response to Mr. Arrington's March 17, 2016 letter, Mr. Homan's March 29, 2016 email, and Mr. Baxter's March 30, 2016 request for submittal of a written response.

If there are questions, please let me know.

Thank you,

Chris M. Bromley

**MCHUGH BROMLEY**

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**From:** Baxter, Garrick [<mailto:Garrick.Baxter@idwr.idaho.gov>]

**Sent:** Wednesday, March 30, 2016 12:09 PM

**To:** Chris Bromley <[cbromley@mchughbromley.com](mailto:cbromley@mchughbromley.com)>; Jones, Doug <[Doug.Jones@idwr.idaho.gov](mailto:Doug.Jones@idwr.idaho.gov)>; Homan, John <[John.Homan@idwr.idaho.gov](mailto:John.Homan@idwr.idaho.gov)>; 'Paul Arrington' <[pla@idahowaters.com](mailto:pla@idahowaters.com)>

**Cc:** Fawcett, Trish <[Trish.Fawcett@idwr.idaho.gov](mailto:Trish.Fawcett@idwr.idaho.gov)>

**Subject:** RE: Belle Ranch & First Security Corporation Water Rights originally decreed as South County Estates LLC

Doug,

If you haven't already processed the change please hold off to give Chris the chance to submit a written response on behalf of FSC.

Chris,

I anticipate your response will be prompt. Please include myself and Paul in the response.

Garrick

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**From:** Chris Bromley [<mailto:cbromley@mchughbromley.com>]

**Sent:** Wednesday, March 30, 2016 9:42 AM

**To:** Jones, Doug; Homan, John; 'Paul Arrington'

**Cc:** Baxter, Garrick; Fawcett, Trish

**Subject:** RE: Belle Ranch & First Security Corporation Water Rights originally decreed as South County Estates LLC

Garrick,

Since I only received notice of this late yesterday, I must ask the agency to cease changing ownership until FSC is given an opportunity to submit a written response to Mr. Arrington's letter. As noted by Mr. Homan, Belle Ranch was given more than a year to respond to IDWR's decision, which was based on clear chain of title, to change ownership into FSC. As the clear owner, FSC must be given an opportunity to respond, which it will do.

Thank you,

Chris M. Bromley

**M<sup>CHUGH</sup>BROMLEY**

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Boise, Idaho 83702

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**From:** Jones, Doug [<mailto:Doug.Jones@idwr.idaho.gov>]

**Sent:** Tuesday, March 29, 2016 4:55 PM

**To:** Chris Bromley <[cbromley@mchughbromley.com](mailto:cbromley@mchughbromley.com)>; Homan, John <[John.Homan@idwr.idaho.gov](mailto:John.Homan@idwr.idaho.gov)>; 'Paul Arrington' <[pla@idahowaters.com](mailto:pla@idahowaters.com)>  
**Cc:** Baxter, Garrick <[Garrick.Baxter@idwr.idaho.gov](mailto:Garrick.Baxter@idwr.idaho.gov)>; Fawcett, Trish <[Trish.Fawcett@idwr.idaho.gov](mailto:Trish.Fawcett@idwr.idaho.gov)>  
**Subject:** RE: Belle Ranch & First Security Corporation Water Rights originally decreed as South County Estates LLC

Chris,

I believe it was Mr Arrington's letter of March 17, 2016 that raised the concern of title. Southern Region office has not started the ownership change to South County Estates yet, but plan to soon. You and your Client will receive ownership change completion correspondence at that time.

Thanks for your rapid response.

Doug

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**From:** Chris Bromley [<mailto:cbromley@mchughbromley.com>]  
**Sent:** Tuesday, March 29, 2016 4:22 PM  
**To:** Homan, John; 'Paul Arrington'  
**Cc:** Baxter, Garrick; Jones, Doug; Fawcett, Trish  
**Subject:** RE: Belle Ranch & First Security Corporation Water Rights originally decreed as South County Estates LLC

John and Garrick,

I tried calling just now to both of you, but it went to voicemail. I would be very interested to see the March 17, 2016 letter you're talking about. I have not sent anything to IDWR about these water rights since early in 2015, when IDWR agreed to split the water rights. I have nothing in my records since then.

If someone could please get back to me, I'd appreciate it.

Thanks,

Chris

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**From:** Homan, John [<mailto:John.Homan@idwr.idaho.gov>]  
**Sent:** Tuesday, March 29, 2016 3:44 PM  
**To:** Paul Arrington <[pla@idahowaters.com](mailto:pla@idahowaters.com)>  
**Cc:** Chris Bromley <[cbromley@mchughbromley.com](mailto:cbromley@mchughbromley.com)>; Baxter, Garrick <[Garrick.Baxter@idwr.idaho.gov](mailto:Garrick.Baxter@idwr.idaho.gov)>; Jones, Doug <[Doug.Jones@idwr.idaho.gov](mailto:Doug.Jones@idwr.idaho.gov)>; Fawcett, Trish <[Trish.Fawcett@idwr.idaho.gov](mailto:Trish.Fawcett@idwr.idaho.gov)>  
**Subject:** Belle Ranch & First Security Corporation Water Rights originally decreed as South County Estates LLC

Paul,

Trish Fawcett forwarded your letter dated March 17, 2016 to the legal staff at the State Office for review and reconsideration. I told her I would review the materials you submitted and materials previously submitted with the change in ownership in 2015. I have completed my review and have advised Idaho Department of Water Resources ("Department" or "IDWR") to change its records for the 7.5/289<sup>th</sup> portion of the water rights into the name of South County LLC., the name listed on the partial decree dated August 31, 2010.

As you are aware IDWR does not possess the legal authority to quiet title in ownership disputes. Disputes over title to real property can only be resolved by a quiet title action brought before a district court. Idaho Code § 6-401; *see also Rural Kootenai Organization, Inc. v. Board of Com'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 Bonner 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.). IDWR only maintains and updates water right ownership records pursuant to Idaho Code Section 42-248. The Department elected to process the First Security Corporation's change in ownership based upon the materials submitted at the time with the application. Despite providing notice of the change to Belle Ranch on January 13, 2015, IDWR did not receive any communication from you expressing a concern with this change until your March 17, 2016 letter. Review of earlier materials and consideration of your recent arguments and submitted materials indicate there is a dispute over current ownership of the 7.5/289<sup>th</sup> portion of these water rights. Because ownership is disputed, I have advised IDWR to change its records for the 7.5/289<sup>th</sup> portion of the water rights into the name of South County LLC consistent with the partial decrees.<sup>[1]</sup> Should you or anyone else disagree with the characterization of the ownership in the Department's records, you have the option to quiet title to the water right in district court. The Department will then alter its water right ownership records, should it become necessary, to comport with the district court judgment.

<sup>[1]</sup> Regarding the larger 281/289 portion of the water right, IDWR intends to leave that water rights in the name of Belle Ranch as there does not appear to be a dispute involving that portion of the water rights at this time.

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<sup>[1]</sup> Regarding the larger 281/289 portion of the water right, IDWR intends to leave that portion the waters rights in the name of Belle Ranch as there does not appear to be a dispute involving that portion of the water rights at this time.