

GIVENS PURSLEY_{LLP}

Attorneys and Counselors at Law

601 W. Bannock Street
PO Box 2720
Boise, ID 83701
Telephone: 208-388-1200
Facsimile: 208-388-1300

www.givenspursley.com

MICHAEL C. CREAMER
DIRECT DIAL: (208) 388-1247
EMAIL: MCC@givenspursley.com

Gary G. Allen
Peter G. Barton
Christopher J. Beeson
Clint R. Bolinder
Erik J. Bolinder
Jeff W. Bower
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Angela M. Reed
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Robert B. White

Retired:
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James A. McClure (1924-2011)
Raymond D. Givens (1917-2008)

November 13, 2014

Via Hand Delivery

Ms. Jean Hersley
Water Rights Section
Idaho Department of Water Resources
322 East Front Street
P.O. Box 83720
Boise, Idaho 83720-0098

RECEIVED

NOV 13 2014

DEPARTMENT OF
WATER RESOURCES

Re: Ownership of Water Rights 61-12272 and 61-12273

Dear Jean:

I am enclosing for Department review and action a Notice of Change of Ownership for Water Right Nos. 61-12272 and 61-12273, together with a check to cover the required \$50 filing fees. The Notice is supported with a copy of a final judgment of the District Court, Elmore County confirming the Browns' ownership of the water rights and reforming the deed previously submitted by Augusta Greenheart to effect a change of ownership of the water rights into her name. A certified copy of the Judgment has been requested from the Court and will be provided to you directly. The Notice is being sent to you now in the interest of time since the Browns are in the process of selling the real property and these water rights. I also am writing to summarize for you the several changes that I believe should be made to the Department's water right records for these rights and the reasons why.

As you are aware, these two water rights were originally split off from rights 61-7151 and 61-2188 in early 2012 in response to a Notice of Change of Ownership filed by Ms. Augusta Greenheart, which was supported by a deed from the Browns to Ms. Greenheart conveying sixty acres of land "together with appurtenances." My clients, Jay and Christine Brown, disputed Ms. Greenheart's ownership and objected to the Department changing its records and splitting the rights. They also brought a quiet title action in Elmore County District Court to confirm their ownership of the water rights.

The resulting decision by the District Court, affirmed by the Idaho Supreme Court, found that the parties' clearly had intended that no water rights were to pass by the conveyance of the sixty acres, that the deed used by the parties mistakenly did so, and the Court ordered that the deed be reformed to expressly reserve from the conveyance any portions of rights 61-7151 and 61-2188.

In the interim, several other transactions have occurred that affect the "post-split" portions of rights 61-7151 and 61-2188 that were not affected by the Brown-Greenheart conveyance and litigation. First, the Browns amended their contract with the City of Mountain Home for sale of the water rights to exclude the contested 61-12272 and 61-12273 portions of rights 61-7151 and 61-2188. The City then filed a transfer application seeking to change the place of use and point of diversion of the "post-split" 61-7151 and 61-2188 rights to the City's service area. Also, in July 2012, the Browns conveyed the north twenty acres of the NE1/4NE1/4 of Section 24 T4SR6E to Daniel Lindstrom and Brian Strickler, using a deed expressly reserving to the Browns any appurtenant water rights, including any portions of rights 61-7151, 61-2188, 61-12272 and 61-12273. A copy of the deed is enclosed. Consequently, out of the original 320 acres that the Browns owned in the E1/2 of Section 24 constituting the decreed permissible place of use for rights 61-7151 and 61-2188, sixty acres (i.e., the South 990 feet of the SE1/4 of Section 24) were sold to Ms. Greenheart without water rights and twenty acres (i.e., the N1/2NE1/4NE1/4 of Section 24) were sold to Lindstrom/Strickler without water rights.

All of the water associated with "post-split" rights 61-7151 and 61-2188 has now been transferred to the City, and the Department's records for these rights now show the place of use and points of diversion to be within the City service area. That is why I do not believe it would be wise, and I think the Department agrees, to change the ownership records for 61-12272 and 61-12273 to revert them back to the original 61-7151 and 61-1288 designations since those numbers are assigned to the City's name, place of use and points of diversion. At the same time, it will not do to simply change the owners' name on the records for rights 61-12272 and 61-12273 without also revising their place of use to describe the lands currently owned by the Browns, which are as follows:

The East ½ of Section 24, Township 4 South, Range 5 East, Boise Meridian, Elmore County, Idaho,

EXCEPTING THEREFROM the South 990 feet of the Southeast ¼ of said Section 24; and

FURTHER EXCEPTING THEREFROM the North ½ of the Northeast ¼ of the Northeast ¼ of said Section 24; and

FURTHER EXCEPTING THEREFROM a strip of land 30 feet wide running along the East side of the said East ½ of said Section 24 deeded to the Glens Ferry Highway District by Right of Way Deed recorded June 14, 1983 as Instrument No. 215824, records of Elmore County, Idaho.

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Idaho Department of Water Resources
November 13, 2014
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If the place of use is not revised for rights 61-12272 and 61-12273, then they would not be authorized to be used on property the Browns actually own, notwithstanding that the water rights were reserved from the conveyances. This could create a presumption that the Browns would have to file a transfer application to change the designated place of use from the currently indicated sixty acres belonging to Greenheart or the twenty acres now owned by Lindstrom/Strickler, which of course, is not the intent of the District Court or the Browns.

I have taken the liberty of cutting and pasting (and hand interlineating) the information that I believe should be incorporated into these two water rights when the Department revises its records.

I will look forward to discussing this with you if you should have any questions about the above facts or concerns about changing the Department's water right records, as I have proposed.

Sincerely,



Michael C. Creamer

MCC/rgm
2273469_1 / 11543-2

Enclosure(s)

cc: John Homan, Deputy Attorney General
Jay and Christine Brown

IDAHO DEPARTMENT OF WATER RESOURCES

Water Right Report 61-12272

WATER RIGHT NUMBER: 61-12272

Current Owner JAY B BROWN + CHRISTINE HOPSON-BROWN
 6370 SW DIVISION 595 E 13th N
 MOUNTAIN HOME, ID 83647
 (208)590-1744

Priority Date: 04/09/1973

Basis: Decreed

Status: Active

SourceTributary

GROUND WATER

<u>Beneficial Use</u>	<u>From</u> <u>To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
IRRIGATION	04/01 to 10/31	0.260 CFS	92.00 AF
	<u>Total Diversion:</u>	0.260 CFS	92.00 AF

Location of Point(s) of Diversion

GROUND WATER SW1/4NE1/4 Sec. 24, Twp 04S, Rge 05E, B.M.
 ELMORE County

Place of Use

IRRIGATION

Twp	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
04S	05E	24	20.0	40.0	40.0	40.0									40.0	40.0	10.0	10.0	260.0

Total Acres: ~~260~~
 240

Conditions of Approval:

- THE USE OF WATER FOR IRRIGATION UNDER THIS RIGHT MAY BEGIN AS EARLY AS MARCH 15 AND MAY CONTINUE TO AS LATE AS NOVEMBER 15, PROVIDED OTHER ELEMENTS OF THE RIGHT ARE NOT EXCEEDED. THE USE OF WATER BEFORE APRIL 1 AND AFTER OCTOBER 31 UNDER THIS REMARK IS SUBORDINATE TO ALL WATER RIGHTS HAVING NO SUBORDINATED EARLY OR LATE IRRIGATION USE AND A PRIORITY DATE EARLIER THAN THE DATE A PARTIAL DECREE IS ENTERED FOR THIS RIGHT.
- C15 THE FOLLOWING WATER RIGHTS FROM THE FOLLOWING SOURCES OF WATER IN BASIN 61 SHALL BE ADMINISTERED SEPARATELY FROM ALL OTHER WATER RIGHTS IN BASIN 61: WATER RIGHT NO. SOURCE NONE NONE THE FOLLOWING WATER RIGHTS FROM THE FOLLOWING SOURCES OF WATER IN BASIN 61 SHALL BE ADMINISTERED SEPARATELY FROM ALL OTHER WATER RIGHTS IN THE SNAKE RIVER BASIN: WATER RIGHT NO. SOURCE NONE NONE ALL WATER RIGHTS WITHIN BASIN 61 ARE FROM CONNECTED SOURCES OF WATER IN THE SNAKE RIVER BASIN AND SHALL BE ADMINISTERED CONJUNCTIVELY.
- C18 THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE ENTRY OF A FINAL UNIFIED DECREE. SECTION 42-1412(6), IDAHO CODE.
- THIS RIGHT IS LIMITED TO THE IRRIGATION OF 23.0 ACRES WITHIN THE PLACE OF USE DESCRIBED ABOVE IN A SINGLE IRRIGATION SEASON. USE OF THIS RIGHT WITH RIGHT NO. 61-12273 IS LIMITED TO THE IRRIGATION OF A COMBINED TOTAL OF 53.8 ACRES IN A SINGLE IRRIGATION SEASON.

5. RIGHT NOS. ~~61-82188, 61-67151~~ AND 61-12273 ^{IS} ARE ALSO DIVERTED THROUGH POINT OF DIVERSION DESCRIBED ABOVE.
6. USE OF THIS RIGHT WITH RIGHT NO. 61-12273 IS LIMITED TO A TOTAL COMBINED DIVERSION RATE OF .62 CFS.

Remarks:

Comments:

1. SBOCK 11/4/1998 COPIED FROM REMARKS
Comment: CRP LAND
2. AJU10-JS 11/21/1998 AJU10 CONDITION UPDATE
Comment: CONDITION CODE(S) C15 ADDED IF NOT ALREADY PART OF RECORD THRU AJU10.
3. Renumber 3/9/2012 10:50:59 AM Renumber WR 61-12272
Comment: This has been renumbered from 61-7151
4. dsmith 3/9/2012 Ownership
Comment: WR NO. 61-7151 HAS BEEN SPLIT BY OWNERSHIP CHANGE INTO WR NO. 61-12272
5. dsmith 3/9/2012 11:15:08 AM POU
Comment: Updated Shape

Dates and Other Information:

Licensed Date:
Decreed Date: 10/26/2000
Enlargement Use Priority Date:
Enlargement Statute Priority Date:
State or Federal: S
Owner Name Connector:
Water District Number:
Generic Max Rate Per Acre:
Generic Max Volume Per Acre:
Decree Defendant:
Decree Plaintiff:
Civil Case Number: 39576
Judicial District: FIFTH
Swan Falls Trust or Nontrust:
Swan Falls Dismissed:
DLE Act Number:
Carey Act Number:
Mitigation Plan: False

Combined Use Limits:

<u>Rate</u>	<u>Volume</u>	<u>Acres</u>
0.62	229.3	53.8

Combined Water Rights: 61-12272 , 61-12273

IDAHO DEPARTMENT OF WATER RESOURCES

Water Right Report 61-12273

WATER RIGHT NUMBER: 61-12273

Current Owner JAY B BROWN AND CHRISTINE HOPSON-BROWN
6379 SW DIVISION 595 E. 13TH N
MOUNTAIN HOME, ID 83647
(208)590-1744

Priority Date: 02/17/1966

Basis: Decreed

Status: Active

Source

Tributary

GROUND WATER

Beneficial Use	From	To	Diversion Rate	Annual Volume
IRRIGATION	03/15	11/15	0.62 CFS	137.3 AF
<u>Total Diversion:</u>			0.62 CFS	137.3 AF

Location of Point(s) of Diversion

GROUND WATER SW1/4NE1/4 Sec. 24, Twp 04S, Rge 05E, B.M.
ELMORE County

Place of Use

IRRIGATION

Twp	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
04S	05E	24	40.0	40.0	40.0	40.0									40.0	40.0	10.0	10.0	260.0
			200																

Total Acres: ~~260~~ 240

Conditions of Approval:

- THIS RIGHT IS LIMITED TO THE IRRIGATION OF 30.8 ACRES WITHIN THE PLACE OF USE DESCRIBED ABOVE IN A SINGLE IRRIGATION SEASON. USE OF THIS RIGHT WITH RIGHT NO. 61-12272 IS LIMITED TO THE IRRIGATION OF A COMBINED TOTAL OF 53.8 ACRES IN A SINGLE IRRIGATION SEASON.
- RIGHT NOS. ~~61-02188, 61-07151~~ AND 61-12272 ARE ALSO DIVERTED THROUGH POINT OF DIVERSION DESCRIBED ABOVE. ¹⁵
- USE OF THIS RIGHT WITH RIGHT NO. 61-12272 IS LIMITED TO A TOTAL COMBINED DIVERSION RATE OF .62 CFS.
- C15 THE FOLLOWING WATER RIGHTS FROM THE FOLLOWING SOURCES OF WATER IN BASIN 61 SHALL BE ADMINISTERED SEPARATELY FROM ALL OTHER WATER RIGHTS IN BASIN 61:
WATER RIGHT NO. SOURCE NONE NONE THE FOLLOWING WATER RIGHTS
FROM THE FOLLOWING SOURCES OF WATER IN BASIN 61 SHALL BE ADMINISTERED SEPARATELY FROM ALL OTHER WATER RIGHTS IN THE SNAKE RIVER BASIN: WATER RIGHT NO. SOURCE NONE NONE ALL WATER RIGHTS WITHIN BASIN 61 ARE FROM CONNECTED SOURCES OF WATER IN THE SNAKE RIVER BASIN AND SHALL BE ADMINISTERED CONJUNCTIVELY.

5. C18 THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE ENTRY OF A FINAL UNIFIED DECREE. SECTION 42-1412(6), IDAHO CODE.

Remarks:

Comments:

1. SBOCK 11/4/1998 COPIED FROM REMARKS
Comment: AC. IRR.=163.8. CRP LAND

2. AJU10-JS 11/21/1998 AJU10 CONDITION UPDATE
Comment: CONDITION CODE(S) C15 ADDED IF NOT ALREADY PART OF RECORD THRU AJU10.

3. ammarshall 5/29/2009 Water Supply Bank
Comment: Upon execution of the rental agreements for Sunview Dairy and Jay Brown, the portions remaining in the Bank and available for rent in 2009 under rights 61-2188 and 61-7151 are as follows:

61-2188: 0.04 cfs 8.1 af 1.8 ac
61-7151: 0.02 cfs 4.8 af 1.2 ac
TOTAL: 0.04 cfs 12.9 af 3.0 ac

4. Renumber 3/9/2012 2:07:08 PM Renumber WR 61-12273
Comment: This has been renumbered from 61-2188

5. dsmith 3/9/2012 Change of Ownership
Comment: WR No. 61-2188 has been split by ownership change into WR No. 61-12273

6. dsmith 3/12/2012 11:44:40 AM POU
Comment: Updated Shape

7. dsmith 3/22/2012 Split Correction
Comment: Correction to split elements per partial decree

Dates and Other Information:

Licensed Date:
Decreed Date: 10/26/2000
Enlargement Use Priority Date:
Enlargement Statute Priority Date:
State or Federal: S
Owner Name Connector:
Water District Number:
Generic Max Rate Per Acre:
Generic Max Volume Per Acre:
Decree Defendant:
Decree Plaintiff:
Civil Case Number: 39576
Judicial District: FIFTH
Swan Falls Trust or Nontrust:
Swan Falls Dismissed:
DLE Act Number:
Carey Act Number:
Mitigation Plan: False

Combined Use Limits:

<u>Rate</u>	<u>Volume</u>	<u>Acres</u>
0.62	229.3	53.8

Combined Water Rights: 61-12272 , 61-12273