



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

Phone: (208) 525-7161 • Fax: (208) 525-7177 • Web Site: www.idwr.idaho.gov

C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

September 21, 2010

Lawrence Vic Riches
10410 West Loyola Drive
Los Altos, CA 94024

Re: Malad Area Water Rights

Dear Mr. Riches,

On September 2nd, you and Jared Simpson met with me to discuss some water rights issues on some of the properties you own in the Malad River drainage. During our meeting we looked at all of the water rights listed in the name of Peoa River Valley, Triple R Development, or Lawrence V Riches. We found that there are a number of changes that need to be made to the water rights to make them coincide with current irrigation practices. Jared identified the acres that are currently irrigated under the water rights. Based on this information, I created draft applications. Enclosed are copies for your review and signature. I feel that it might be helpful to provide a brief summary of the basis for each application.

Application for Transfer 76813

This property is covered by Deep Creek Irrigation Company shares and groundwater. The shares are delivered to the property through a pipeline. A valve in the mainline can switch from the pressurized Deep Creek water to ground water. Jared explained that the Deep Creek water is used in the early irrigation season and the ground water pump is turned on later in the season, when the Deep Creek water is gone. In our meeting, we found that the acres currently irrigated with ground water are different than those described in water right license 15-2058. This transfer is needed to update the water right place of use to cover the ground actually irrigated. As part of the transfer, the ownership of water right 15-2058 will be changed to be in the name of Peoa River Valley. **Please provide warranty deeds tracing ownership of the old place of use from the listed owner (Ralph Tovey) to Peoa River Valley.**

Application for Transfer 76815

Jared stated that a new center pivot is being installed on this property. A transfer is needed to rearrange the water right place of use to cover the ground that will be irrigated by the new pivot. The water right (15-7223) is already in the name of Triple R Development and Peoa River Valley. No ownership change is needed within this transfer. Please note on the signature page that you are signing on behalf of Peoa River Valley and Triple R Development.

Application for Permit 15-7336

This application covers the new storage pond on the Malad River and the proposed irrigation on both sides of the river. If approved as drafted, the permit will allow you to store water in the pond during

times when water is available on the river (generally in the winter and early spring). It will also allow you to use the stored water for irrigation and to use Malad River water for irrigation when it is available. All of the acres covered by the proposed place of use are currently in the name of Pheasant Brook. **Please provide warranty deeds showing that the place of use and point of diversion are now owned by Peoa River Valley.**

Ownership Change for Statutory Claim 15-4007

Most of the place of use described in 15-4007 is listed in Oneida County taxlot records in the name of Pheasant Brook. **To change ownership of this water right, you need to provide warranty deeds tracing ownership from the current listed owner (Blackburn Land & Cattle) to Peoa River Valley.** One area of concern is highlighted on the attached map. Part of the described place of use is in the name of Scott Blaisdell. If Peoa River Valley does not own the property highlighted in green, then the water right may need to be split, with a portion going to Blaisdell. If Peoa River also owns the Blaisdell property, **please provide warranty deeds tracing ownership of the Blaisdell property from Blackburn Land & Cattle to Peoa River Valley.**

Ideally, you would also complete a transfer on statutory claim 15-4007, re-defining the place of use to match what is actually being irrigated today. However, transfers of statutory claims can be quite difficult. A statutory claim is simply an assertion of a water right and has not been verified by the department or a court. The department essentially has to validate all of the elements of the statutory claim before it can be transferred. This includes establishing sufficient evidence of priority date. In our meeting, **you agreed to search for evidence (documents or affidavits) supporting the priority date claimed (9/28/1925).** If you are able to obtain sufficient evidence, we can discuss how to move forward with an official transfer.

Possible Transfer for Water Right 15-2010

As I was gathering the information for the various applications, I discovered that there is another water right that should be changed into the name of Peoa River Valley. Water right 15-2010 covers much of the same ground as statutory claim 15-4007. A map is included to show where the water right place of use is located. Water Right 15-2010 was licensed with a 640-acre place of use encompassing land on the west and east side of the river. This is unusual because the surface ditches described in the application were located on the east side of the river. There is no reference in the file to a flume or any other means of crossing the river channel to serve the lands on the west side.

Peoa River Valley (formerly Pheasant Brook) does not own some of the property on the west side of the river. As shown on the map, 87 acres of the water right's place of use are owned by the individuals listed. This constitutes roughly 14% of the total water right. In 2008, one of the people on the west side of the river, Joseph Schow, filed an application to change the ownership of a portion of water right 15-2010 into his name. Michael Holliday from our office conducted a field exam for 15-2010 and determined that water was not delivered to the west side of the river through the ditch systems. Therefore, Mr. Schow's ownership change was denied.

All of the documents contained in the water right backfile for 15-2010 describe the place of use as it is shown on the enclosed map. The hand-drawn maps in the backfile, however, show that the entire place of use for the water right should be on the east side of the river. It appears that the original

application may have been incorrect. The faulty legal description was carried forward by the department and the applicant and eventually became codified in the water right license.

There is little that can be done to correct the mistake at this point. The field exam conducted in 2008 verified that water is not delivered to the west side of the river. Therefore, that portion of the water right (the authority to irrigate acres on the west side of the river) has been forfeited. It is possible to overcome forfeiture by "resuming" the use of water described in the original right. However, it seems impractical to now try to deliver water to the 87 acres owned by other people.

The simplest way to resolve the problem would be to file another transfer. The transfer would state that water has never been delivered to the west side of the river and that the acres on the west side of the river are forfeited. Water right 15-2010 was licensed for 4.0 cfs on 640 acres. This amounts to 0.3 inches per acre. Most water rights in the state fall closer to the 1 inch per acre standard. As part of the transfer, you would retain the full amount of water, and would just give up acres. Approximately 205 acres of the water right place of use are on the west side of the river. If these acres were forfeited, that would leave 4 cfs to irrigate 435 acres. This is still less than 0.5 inches per acre.

In order to begin the transfer process, you need to identify what acres are currently being irrigated under water right 15-2010. If you would like to pursue the transfer as described, please outline the irrigated acres on the enclosed map and return it with the other documents. I will put together a draft for you to review and sign.

Fees

The following fees are associated with each of the applications. The fees are based on the amount of water and number of acres involved in the permit or transfer.

Transfer 76813	\$290.00
Transfer 76815	\$250.00
Permit 15-7336	\$290.00
Ownership Change on 15-4007	\$25.00 (if Peoa owns Blaisdell property)
	\$100.00 (Blaisdell not owned, split required)
Total	\$855.00 (if Peoa owns Blaisdell property)
	OR \$930.00 (Blaisdell not owned, split required)

I hope this summary is helpful. I have marked the places where a signature is required. Please note and document your authority to sign on behalf of Peoa River Valley or Triple R Development. If you have any questions, feel free to give me a call.

Sincerely,

James Cefalo
Water Resources Program Manager
IDWR – Eastern Region

Cc: Jared Simpson