



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 Interim Director

January 18, 2013

Bosen Land & Livestock LLC
c/o David Bosen
2545 West 2400 North
Preston, ID 83263

Dear Mr. Bosen:

In August 2009, you filed an ownership change with the department, seeking to update the ownership records for water rights 13-945B, 13-2264, 13-7033, and 13-2182. In addition to updating ownership for the rights, you requested that AXA Equitable Life Insurance Company be listed as having a security interest in the rights. The ownership of water right 13-2182 (ground water) was updated in August 2012. A water right report for right 13-2182 is enclosed. We were also able to add AXA as a security interest holder on all of the rights.

Based on the evidence available to the department at this time, we have also updated the ownership records for water rights 13-945B, 13-7033, and a split portion of right 13-2264. As with all ownership changes, if additional or more-reliable ownership information is provided in the future, the department will update the water rights to agree with the applicable legal conveyance documents.

Water right reports for all three water rights are enclosed. Because the three Eldon Bingham water rights from Deep Creek are fairly complex, I wanted to provide you a summary of how the ownership changes were completed.

Water right 13-945 was decreed to Willis Mendenhall, Loren Mendenhall, and Jacob Peterson in the 1920 Bear River Decree (Entry #506). In August 2012, I prepared a memo summarizing the conveyance history of all of the water rights held by Mendenhall, Mendenhall and Peterson. I've included another copy of the memo for your reference. For purposes of this letter, however, I only want to note that in 1946 Loren Mendenhall sold a portion of water right 13-945 to Eldon Bingham.

The portion sold to Bingham (13-945B) authorized the diversion of 2.57 cfs. If the number of irrigated acres under water right 13-945B is calculated based on a proportionate share of the total Loren Mendenhall rights, 13-945B may be used on 150.5 acres ($2.57 \text{ cfs} / 4.065 \text{ cfs} \times 238 \text{ acres} = 150.5 \text{ acres}$).

In the August 2012 memo, I stated that right 13-945B should be limited to 82 acres. Since the time the memo was completed, however, I have re-evaluated the circumstances of the Bingham transfer. Although Mr. Bingham did not transfer water right 13-945B to his farm to the north until 1961 (15 years after acquiring the right), he would not necessarily have forfeited any of the irrigated acres under right 13-945B. Therefore, you can disregard the sentence from the memo limiting 13-945B to 82 acres. I believe the correct number of irrigated acres under right 13-945B should be 150.5 acres.

The water right record for 13-945B has been updated to show Bosen Land & Livestock as the current owner. A comment has also been added to the right noting the number of irrigated acres associated with the right. The water right record for 13-7033 has also been updated to show Bosen Land & Livestock as the current owner of the entire right.

In my initial review of your ownership change, I noticed that a small part of the original place of use for the Bingham water rights had been sold off. The current owner of the property is the Sayad Family Trust. You recently provided a deed for the Sayad property showing that Sayad likely owns 21 inches of water right 13-2264. I spoke to Sharon Sayad in December 2012. She confirmed that the Sayad Family Trust owns 21 inches of a water right from Deep Creek and that they do not claim ownership of any other water rights.

According to the deed, the Sayad Family Trust owns 0.42 cfs (21 inches) of water right 13-2264. The difficult task now is determining how many of the 390 irrigated acres listed in water right 13-2264 should go with the Sayad property. Using aerial photography and the field exam map prepared for right 13-2264, I estimate there are about 25 irrigated acres associated with the Sayad property.

There are alternative methods for dividing up the irrigated acres. For example, Eldon Bingham used a total of 4.82 cfs of Deep Creek rights on the 390 acres. 4.82 cfs is made up of 13-945B (2.57 cfs), 13-2264 (1.50 cfs), and 13-7033 (0.75 cfs). This equates to 0.012359 cfs per acre. Using this ratio, Sayad's 0.42 cfs (21 inches) would amount to 33.9 acres.

Because the Sayad deed is silent as to the number of irrigated acres conveyed, I believe Sayad's portion of 13-2264 should be based on the number of acres licensed to that property. As stated above, it appears that there were 25 irrigated acres associated with the Sayad property in the license for right 13-2264. The volume associated with the Sayad right is derived from the total volume available under all three of the Eldon Bingham Deep Creek rights (3.5 acre-feet per acre).

Water right 13-2264 has been split as follows:

13-7875	Bosen L&L	1.08 cfs	365 acres	460.6 af
13-7874	Bingham (Sayad)	0.42 cfs	25 acres	87.5 af

There is one other important point I wanted to make in this letter. You should now consider filing a water right transfer to move water rights 13-945B and 13-7033 fully onto your property. The department cannot update elements of a water right (such as point of diversion or place of use) through an ownership change. Such changes can only be made through a water right transfer. Although 13-945B and 13-7033 are now in the name of Bosen Land & Livestock, the place of use for these rights continues to be located on the original Bingham property, which includes the Sayad property.

If you do choose to pursue a transfer, you could rearrange the three Deep Creek water rights to reflect your current irrigation practices. I noticed as I compared the field exam maps prepared in the 1970s with aerial photography from today that there have been some changes to the irrigated acres over time. At some point when you are free this winter, you should come to Idaho Falls and we can sit down and prepare the transfer application. Thank you for your help on this ownership change. Feel free to call if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Cefalo', written in a cursive style.

James Cefalo
Water Resources Program Manager

01-22-2013

IDAHO DEPARTMENT OF WATER RESOURCES
Water Right Report 13-945 B

WATER RIGHT NUMBER: 13-945 B

Owner Type: Name and Address
Security Interest AXA EQUITABLE LIFE INSURANCE CO
10100 TRINITY PARKWAY STE 400
STOCKTON, CA 95219

Current Owner BOSEN LAND & LIVESTOCK, LLC
2545 W 2400 N
PRESTON, ID 83263

Priority Date: 6/1/1882

Basis: Decreed

Status: Active

Tributary:

Source: DEEP CREEK BEAR RIVER

<u>Beneficial Use:</u>	<u>From / To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
IRRIGATION	04/20 to 09/30	2.570 CFS	
	<u>Total Diversion</u>	2.570 CFS	

Location of Point(s) of Diversion:

DEEP CREEK NWSE Sec. 7, Twp 15S, Rge 39E B.M. FRANKLIN County

Place of Use:

IRRIGATION within FRANKLIN County

			NE				NW				SW				SE				Totals
Twp	Rge	Sec	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
15S	39E	7		40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	560
								L1	L2				L3	L4					
15S	39E	18		40.0			40.0	40.0											120
								L1											
15S	39E	20			40.0					26.0	34.0					34.0			134
Total Acres: 814.0																			
Acre Limit: 150.5																			

Conditions of Approval:

- Points of diversion and place of use defined in Transfer No. 958. Irrigated acres = 150.5. Irrigated acres based on proportionate share of total Loren Mendenhall rights. Points of diversion described as West Cache Supplemental Canal and a pump located 200 feet above the West Cache Canal.

01-22-2013

IDAHO DEPARTMENT OF WATER RESOURCES
Water Right Report 13-7874

WATER RIGHT NUMBER: 13-7874

<u>Owner Type:</u>	<u>Name and Address</u>
Current Owner	ELDON B BINGHAM RT 3 PRESTON, ID 83263

Security Interest	AXA EQUITABLE LIFE INSURANCE CO C/O RABO AGRIFINANCE INC 10100 TRINITY PARKWAY STE 400 STOCKTON, CA 95219
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Priority Date: 2/23/1965

<u>Basis:</u>	License
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Status: Active

Tributary:

Source:

DEEP CREEK

BEAR RIVER

Beneficial Use:

From / To

Diversion Rate

Annual Volume

IRRIGATION

04/01 to 11/01

0.420 CFS

87.50 AF

Total Diversion

0.420 CFS

87.50 AF

Location of Point(s) of Diversion:

DEEP CREEK

NWSE

Sec. 7, Twp 15S, Rge 39E B.M. FRANKLIN County

Place of Use:

IRRIGATION within FRANKLIN County

			NE				NW				SW				SE						
Twp	Rge	Sec	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	Totals		
15S	39E	7					18.0				1.7	2.5	2.8								25
																			Total Acres:	25.0	
																			Acre Limit:	25.0	

IDAHO DEPARTMENT OF WATER RESOURCES
Water Right Report 13-7875

			NE				NW				SW				SE				
Twp	Rge	Sec	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	Totals
15S	39E	7			12.0	40.0				0.3	10.5	18.2	30.0	37.0	35.0	3.0	16.0		202
15S	39E	17						9.0				11.0							20
15S	39E	18		39.0	20.0	25.0	26.0	29.0		4.0									143
																			Total Acres: 365.0
																			Acre Limit: 365.0

IDAHO DEPARTMENT OF WATER RESOURCES

Water Right Report 13-7033

WATER RIGHT NUMBER: 13-7033

<u>Owner Type</u>	<u>Name and Address</u>
Security Interest	AXA EQUITABLE LIFE INSURANCE CO C/O RABO AGRIFINANCE INC 10100 TRINITY PARKWAY STE 400 STOCKTON, CA 95219
Current Owner	BOSEN LAND & LIVESTOCK, LLC 2545 W 2400 N PRESTON, ID 83263

Priority Date: 01/19/1973

Basis: License

Status: Active

<u>Source</u>	<u>Tributary</u>
DEEP CREEK	BEAR RIVER

<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
IRRIGATION	04/01	to 11/01	0.750 CFS	
	<u>Total Diversion:</u>		0.750 CFS	

Location of Point(s) of Diversion

DEEP CREEK	NW1/4SE1/4	Sec. 7, Twp 15S, Rge 39E, B.M.	FRANKLIN County
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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	
15S	39E	7			11.0	36.0			16.0	1.0	11.0	26.0	27.0	37.0	31.0			20.0	216.0
15S	39E	17							10.0				11.0						21.0
15S	39E	18			36.0	25.0	21.0	33.0	20.0	6.0									141.0

Total Acres: 378

Conditions of Approval:

1. X35 Rights 13-945B, 13-7033, and 13-7875 when combined shall not exceed a total annual maximum diversion volume of 1235.5 af at the field headgate.
2. R63 This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 3.5 afa per acre at the field headgate for irrigation of the place of use.

01-22-2013

IDAHO DEPARTMENT OF WATER RESOURCES
Water Right Report 13-2182

WATER RIGHT NUMBER: 13-2182

Owner Type: Name and Address
Security Interest AXA EQUITABLE LIFE INSURANCE CO
C/O RABO AGRIFINANCE INC
10100 TRINITY PARKWAY STE 400
STOCKTON, CA 95219

Current Owner BOSEN LAND & LIVESTOCK, LLC
2545 W 2400 N
PRESTON, ID 83263

Priority Date: 9/7/1954

Basis: License

Status: Active

Tributary:

Source:

GROUND WATER

N/A

Beneficial Use:

From / To

Diversion Rate

Annual Volume

IRRIGATION

04/01 to 10/31

0.384 CFS

DOMESTIC

01/01 to 12/31

0.384 CFS

Total Diversion

0.384 CFS

Location of Point(s) of Diversion:

GROUND WATER

SWSW

Sec. 20, Twp 14S, Rge 39E B.M. FRANKLIN County

Place of Use:

IRRIGATION within FRANKLIN County

			NE				NW				SW				SE					
Twp	Rge	Sec	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	Totals	
14S	39E	19																	19.0	19
14S	39E	30	19.0																	19
14S	39E	20												38.0					38	
14S	39E	29						38.0												38
Total Acres:																			114.0	

DOMESTIC Same as IRRIGATION