



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

Phone: (208) 525-7161 FAX: (208) 525-7177 www.idwr.idaho.gov

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

July 22, 2013

CAMA SDIRA LLC
fbo Scott Brinkmeyer
5 Valley Square, Suite 103
512 Township
Bluebell, PA 19422

RE: Ownership Change for Water Rights 13-743, 13-744, 13-751 and 13-753

Dear Mr. Brinkmeyer:

Thank you for providing additional information relating to your proposed ownership change for the water rights listed above. This letter is meant to provide you a brief description of the water rights and to explain why the department cannot update the ownership records for the water rights at this time.

The water rights listed above are for the Middle Fork of Trout Creek which is located in the Bear River drainage. The last general adjudication of water rights in the Bear River basin occurred in 1920, nearly 100 years ago. Property owners have done very little to update the ownership records for the water rights since that time. Consequently, many of the water rights in the Bear River basin are still in the name of the 1920-era owners.

Most properties have been subdivided and sold multiple times over the last 100 years. In addition, the 1920 Bear River Decree described water rights in very general (ambiguous) terms. As ownership changes are filed in the Bear River basin, the Department requires possible owners to assemble a chain of title tracing back to the listed owner. In most cases, the chain of deeds contains sufficient information to overcome any ambiguity in the actual location of the water rights. In some cases, however, the Department still cannot determine with any degree of confidence where the water rights are actually located. In such instances, the Department returns the ownership change application and filing fee and advises the water user to 1) pursue a quiet title action in civil court (where a judge can declare who legally owns the water rights), or 2) wait for a general adjudication of water rights in the Bear River (which may not occur for a number of years).

Unfortunately, after an exhaustive review of the documents available to the Department at this time, we are not able to update the ownership for any of the water rights listed above. CAMA SDIRA LLC may be the true owner of the entirety or a

portion of the rights listed above. Without additional evidence, however, we simply cannot determine what portion is owned by CAMA SDIRA. In order to illustrate the ambiguity in the water rights, I have included a brief description of the water rights and the relevant deeds.

Water Rights 13-743/13-744

Entry No. 347 in the 1920 Bear River Decree describes water right 13-743 with the following elements: priority date = 5/1/1884, diversion rate = 1.50 cfs (75 inches). The same entry describes water right 13-744 with the following elements: priority date = 5/1/1901, diversion rate = 0.50 cfs (25 inches). Both rights, in combination, were used to irrigate 100 acres located within the SENE and NESE of Section 20 and the SW 1/4 of Section 21, T11S, R41E. The decree states that A.A. Ruud was the owner of the water rights.

The ambiguity in the decree is obvious. The water rights authorize the irrigation of 100 acres within a 240-acre area. The 1920 decree does not specify where the 100 acres may be located within the 240-acre area.

One of the earlier deeds provided to the department helps narrow the ambiguity significantly. A 1946 deed from the heirs of AA Ruud to C Norman Ruud, describes the property owned by AA Ruud at the time of his death. He owned the SENE and NESE of Section 20 and the east 26.25 acres of the NWSW of Section 21, T11S, R41E. This amounts to 106.25 acres. We know that the 100 acres of irrigation belongs somewhere within the 106.25-acre area.

Boyd Ruud owned the entire 106.25 acre parcel in 1985, but deeded most of the land to the Federal Bank of Spokane to avoid foreclosure proceedings. Mr. Ruud was allowed to keep a 7.4-acre parcel in the NWSW of Section 21 as part of that agreement. The 1985 deed to the bank states that the property deeded to the bank included any water rights appurtenant to the land, but did not specify how much of the water rights were associated with the bank property.

CAMA SDIRA is now the owner of all of the land once owned by AA Ruud, except for the 7.4-acre parcel still owned by Boyd Ruud. CAMA SDIRA's portion of the AA Ruud land is 98.85 acres. Water right 13-743 authorizes the irrigation of 100 acres. So, the water right will likely need to be split. The department does not have any evidence indicating what portion of rights 13-743/13-744 is associated with the Boyd Ruud property, if anything at all. Water district records for the Middle Fork of Trout Creek show that Boyd Ruud still pays an annual assessment for water right 13-743.

One of the ways to eliminate the ambiguity and move forward with the ownership change for these two water rights is for you to contact Mr. Ruud and come to an agreement about the rights. Mr. Ruud could then provide a written statement to the Department indicating how many acres of water rights 13-743 and 13-744 are associated with his property. CAMA SDIRA would be the owner of the rest of the rights.

Water Right 13-751

Entry No. 353 in the 1920 Bear River Decree describes water right 13-751 with the following elements: priority date = 5/1/1884, diversion rate = 0.42 cfs (21 inches), irrigated acres = 21 acres within a 53.75-acre parcel, which is comprised of the NESW of Section 21, T11S, R41E and the eastern 13.75 acres of the NWSW of Section 21. The Bear River Decree states that the owner of the right is DC Morehead. The 1920 decree did not specify where the 21 irrigated acres were located within the 53.75-acre parcel.

The deeds provided to the department confirm that DC Morehead owned the 53.75-acre parcel in the 1919 time period. In 1919, DC Morehead conveyed the 53.75-acre parcel and a 21-inch water right to Alfred Hansen. The 53.75-acre parcel remained a contiguous unit until 2007. The department does not have any evidence showing that water right 13-751 was ever moved off of the decreed place of use.

In 2007/2008, the William Hansen Trust conveyed a 5-acre piece of the 53.75-acre place of use to Max/Ross/Randy Elliot. The deed between William Hansen Trust and Elliot did not mention any specific water rights. William Hansen Trust is still the listed owner for the remaining portion of the original 53.75-acre parcel. In 2012 Max/Ross/Randy Elliot conveyed the 5-acre parcel (in addition to other property) to CAMA SDIRA.

The Department does not have any evidence showing where the 21 irrigated acres are located within the 53.75-acre place of use description. It is possible that your 5-acre parcel was never historically irrigated with water right 13-751, in which case, the Elliots would have no ownership interest in the right and could not have conveyed any portion of the water right to CAMA SDIRA.

Water Right 13-753

Entry No. 354(b) in the 1920 Bear River Decree describes water right 13-753 with the following elements: priority date = 5/1/1901, diversion rate = 0.80 cfs (40 inches). The water right authorizes the irrigation of 40 acres in the south half of the north half of Section 20, T11S, R41E. The owner of the water right was William Bassett. The decree does not give any more description of where the irrigated acres were located.

The Department received a chain of deeds with a separate ownership change showing the property owned by William Bassett in 1920. The Bassett property was generally located in the NW1/4 and SWNE of Section 20. None of the deeds provided with your ownership change trace back to William Bassett or list William Bassett as an owner. It appears that water right 13-753 is not actually associated with your property.

Water Rights 13-7713, 13-7715, 13-7717

During my review of water rights in the area, I discovered three other water rights that are appurtenant to your property. These three water rights were included in the Bear River decree, but contained no ambiguity in the description of irrigated acres. In

other words the original water rights were good for 240 acres of irrigation and the decree described the exact 240-acre parcel. A portion of these three rights covers your property in the NWNE and NENE of Section 20, T11S, R41E. Each of the water rights would need to be split to complete the ownership change. If you would like to update the ownership for these three rights, please complete a revised ownership change form and include a filing fee of \$300 (\$100 per right that must be split).

I know water right ownership matters can be very complicated. I hope this letter helps you understand the limitations of the Department in this case. A new basin-wide adjudication of water rights would go a long way in resolving the ownership questions in the basin. If, however, you do not want to wait for an adjudication to address the ownership questions, you may want to pursue an action in civil court to quiet title to your portion of the water rights. Please feel free to contact me directly if you have any follow-up questions or want to discuss this letter in greater detail.

Sincerely,

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

James Cefalo
Water Resources Program Manager
(208) 525-7161