



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 Interim Director

December 18, 2012

Joseph F. Swensen and Lyle Swensen
685 Bench Lago Road
Grace, ID 83241

RE: Notice of Change in Water Right Ownership

Dear Water User:

In September 2012 you filed a Notice of Change in Water Right Ownership for five water rights (13-684, 13-702, 13-7769, 13-7771, and 13-7773). I have just completed a review of these water rights and the evidence of ownership available to the department at this time. This letter is meant to provide you a description of the water rights, issues relating to ownership of the rights, and a summary of the ownership updates that can be completed at this time.

It is important to note that the department does not have the legal authority to "change" ownership. Ownership of water rights is governed by court orders and legal conveyance documents. The Notice of Change in Water Right Ownership form is simply a mechanism used to update the department's water right records. The department strives to update its records to be consistent with available deeds. However, there are many instances, particularly in the Bear River basin, where old decrees and historical deeds are simply not sufficient to verify current ownership. In such cases, a water user may have to pursue a court action to quiet title to a water right.

Water right 13-684 (Entry #312 in the 1920 Bear River Decree) carries a priority date of May 1, 1904 and authorizes the diversion of 1.60 cfs from an unnamed stream in Saltpetre Hollow. The point of diversion is described as "ditches diverting on the land." The place of use is described as 80 irrigated acres located in the W1/2 of the SE quarter, Section 15, T11S, R40E. The owner listed in the 1920 decree was Joseph Swensen.

As part of your ownership change, you provided a chain of deeds tracing ownership of certain parcels back to Joseph Swensen. A document from 1903 (Instrument No. 18275) establishes that Joseph Swensen owned the W1/2 of the NE quarter and the N1/2 of the SE quarter of Section 15, T11S, R40E. Please refer to the enclosed map for water right 13-684. It is possible that the 1920 decree contains an error in the place of use description. If the place of use were the W1/2 of the NE quarter, it would match the 1903 document. We do not have any evidence whether Mr. Swensen ever owned the SWSE of Section 15.

The deeds provided with your ownership change show you own the NWSE and NESE of Section 15 (except for a 2.5 acre parcel in the NWSE). You do not own the entire place of use described in water right 13-684. Therefore, based on the information available at this time, the water right must be split. If you believe you are the owner of the entirety of water right 13-684, you must provide evidence that the property owner of the SWSE of Section 15, Jorgensen Farms Ltd., does not have any interest in the water right. You must also show that the owner of the 2.5 acre parcel (shown as an exclusion in your deed) does not have an interest in the water right. This can be done by obtaining a written statement from both owners that they do not have any interest in water right 13-684. If you are able to get written releases from these other owners, you should then take steps to move water right 13-684 fully onto your property.

If, however, you are not able or not interested in securing written releases from the other property owners within the place of use for water right 13-684, the water right must be split. The fee for updating ownership of a split water right is \$100. Your filing only included \$25 for that right. Before ownership of 13-684 can be updated, you need to provide an additional \$75.

Water right 13-702 (Entry #324 in the 1920 Bear River Decree) carries a priority date of May 1, 1905 and authorizes the diversion of 1.2 cfs from Whiskey Creek. The point of diversion is described as the Mickelsen Swensen Ditch, taking off on the east side of Whiskey Creek. The place of use is 60 acres within Lot 4 of Section 18 and Lot 1 of Section 19, T11S, R41E (an 80 acre boundary). Please refer to the enclosed map for water right 13-702. Mary Swensen is the listed water right owner in the 1920 Bear River Decree.

The decreed place of use creates some ambiguity. It is not clear where the 60 irrigated acres are located within the 80-acre boundary description. Deeds included with your ownership change show the Swensen family owned the S1/2 of Lot 1, Section 19 (about 20 acres). Given the ambiguity in the decree, it is possible that you do not own any of water right 13-702. Before an ownership change can be completed, the department needs more information about the historical ownership of the N1/2 of Lot 1, Section 19 and Lot 4, Section 18. We need more evidence of the extent of property in the area owned by Mary Swensen or the Swensen family in 1920.

Another issue with water right 13-702 is the fact that the ditch described in the decree diverts water on the east side of Whiskey Creek, yet most of the place of use is located on the west side of Whiskey Creek. Are you aware of a flume or siphon that conveys ditch water across Whiskey Creek? If so, where is (or was) this siphon/flume located? The location and elevation of the ditch and the topography of the land may help us determine where the 60 irrigated acres were located in 1920, at a time when all irrigation must have taken place through flood irrigation.

Water rights 13-7769, 13-7771, and 13-7773 (split portions of rights 13-699, 13-700, and 13-701 respectively) were part of a recent transfer review conducted by IDWR for Whiskey Creek Ranch (Nathan Hale). Therefore, the department has already performed a topography analysis for the rights. According to department records, your proportionate share of the water rights, based on the place of use associated with your

property, would be 18.4 irrigated acres and the following diversion rates: 0.09 cfs of 13-7769; 0.15 cfs of 13-7771; and 0.13 cfs of 13-7773. In total, this amounts to 0.37 cfs on 18.4 acres or one inch per acre. Before moving forward with splitting the rights, I wanted you to confirm that this is the amount of water you anticipated from these rights.

In my research I found that there is a water right that may be associated with your property listed in Section 9. The 1920 Bear River Decree describes a May 1, 1889 water right from the Middle Fork of Trout Creek in the name of Joseph Swensen. The right is good for the irrigation of "35 acres in Section 9." Because the decreed place of use is so vague (35 acres within a 640-acre boundary), in order to update ownership of this right, the department would need evidence showing that Joseph Swensen only owned the SWNW of Section 9 in 1920. We would also ask for evidence that water from the Middle Fork of Trout Creek has been used on the property.

To summarize, based on the information available at this time, the department is able to update ownership of water right 13-684 (Saltpetre Hollow) if the water right is split and an additional \$75 is submitted for the split. You may also choose to provide additional evidence of ownership if you believe you own the entire right. The department is unable to update the ownership of 13-702 (Whiskey Creek) until more information is provided about the ownership history of the other properties within the decreed place of use. The department is able to split and update ownership records for water rights 13-7769, 13-7771, and 13-7773 as listed above. I would like you to verify that the split shown is correct. Please contact me at your earliest convenience to discuss the items outlined above in greater detail.

Sincerely,

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

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

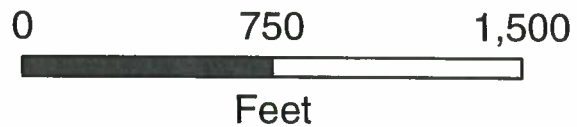
Enclosures: Maps

Water Right 13-684



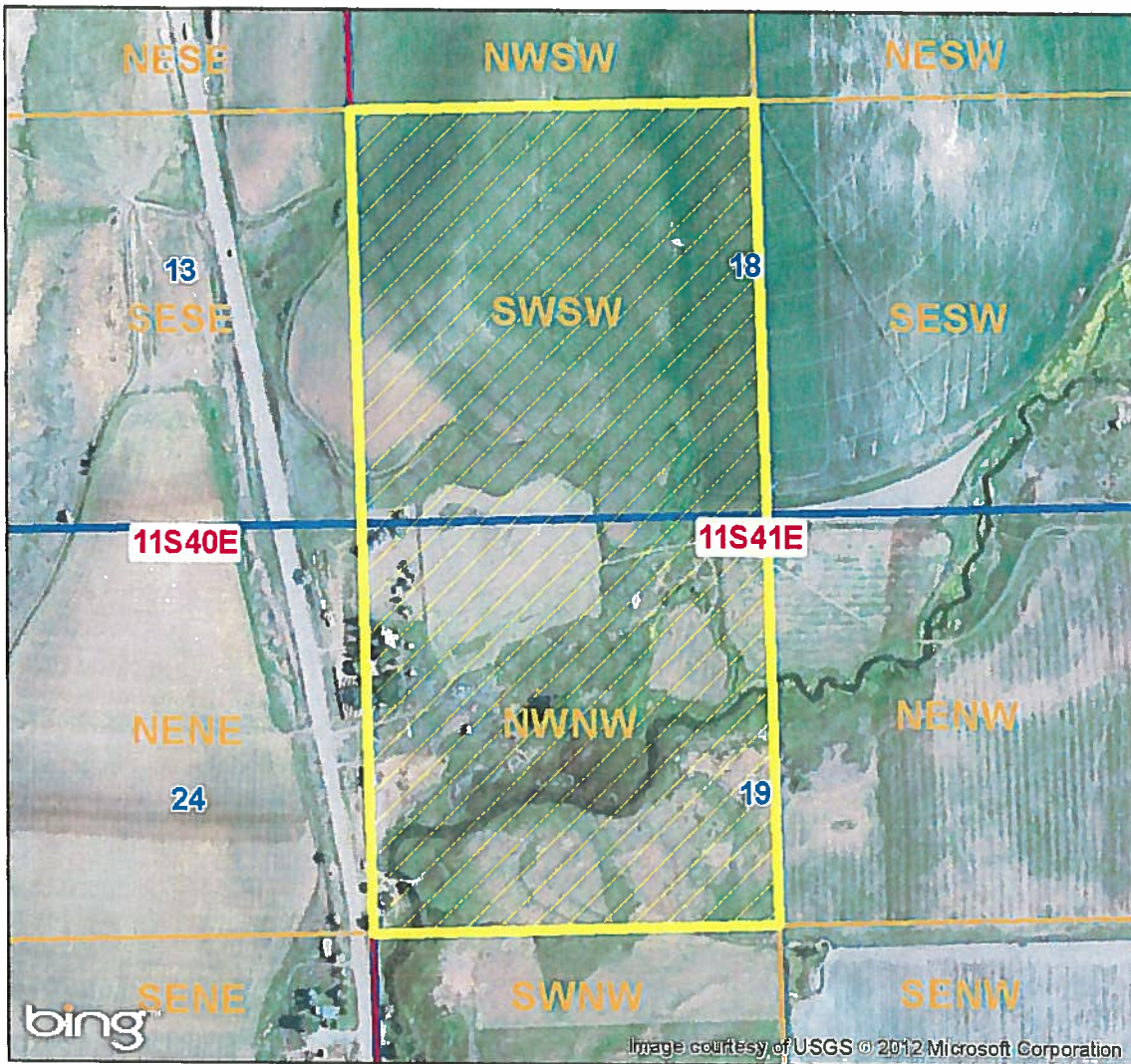
Legend

-  Water Right POU
 Township/Range
 Sections
 QQ

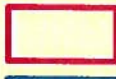


2010 Aerial Photography

Water Right 13-702



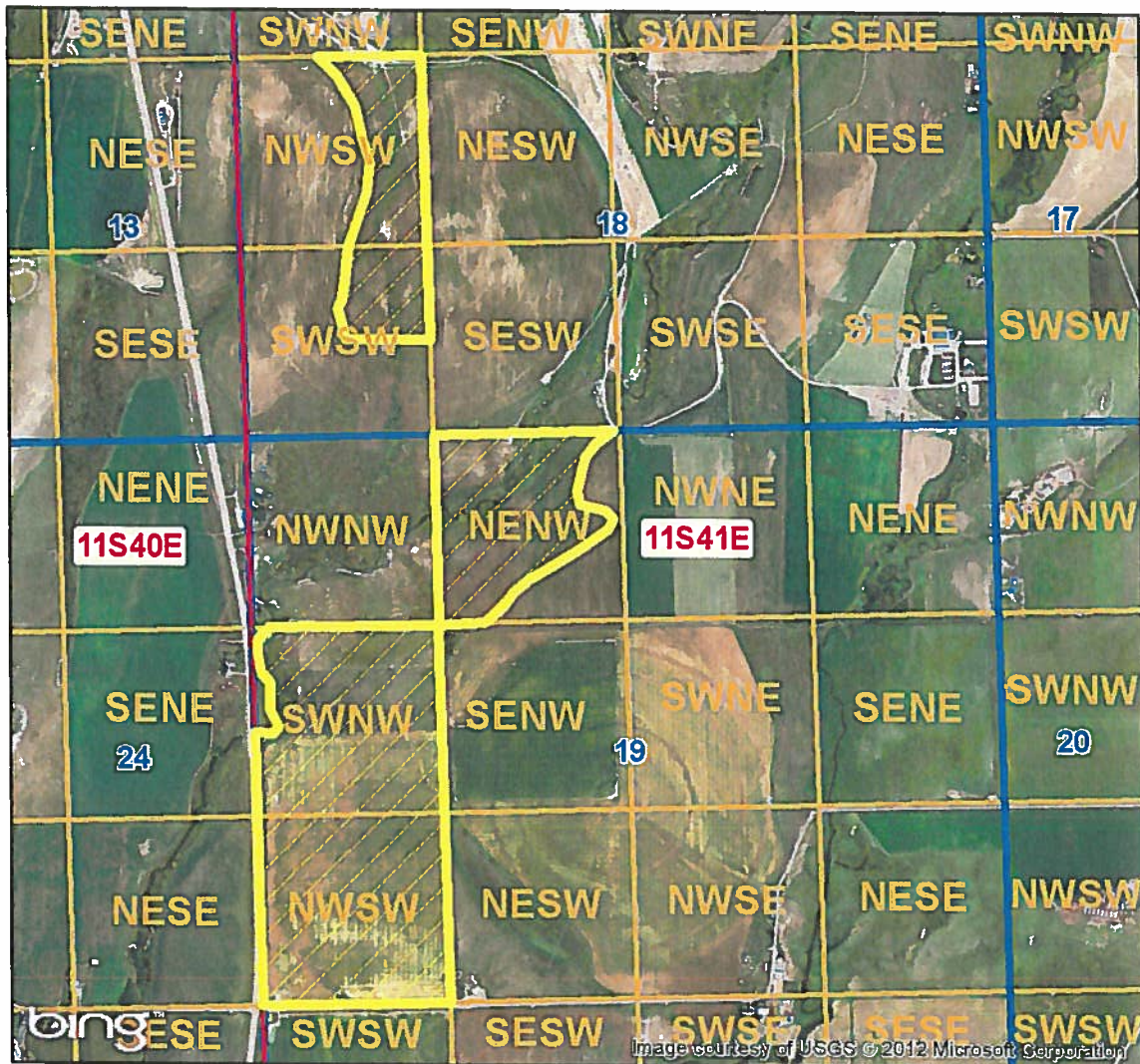
Legend

-  Water Right POU
-  Township/Range
-  Sections
-  QQ

0 750 1,500
Feet

2010 Aerial Photography

Water Rights 13-7769, 13-7771, and 13-7773



Legend

-  Water Right POU
-  Township/Range
-  Sections
-  QQ

0 1,750 3,500
Feet

2011 Aerial Photography