



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

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