

13-961

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July 25, 2012

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*Eastern working with
 Randy Budge to
 resolve*

JS

Re: Notice of Change in Water Right Ownership Requirements

Dear Gary:

I am writing regarding the Department's requirements for processing a Notice of Change in Water Right Ownership – Form 42-248/42-1409(6). In some instances the Regional Offices are returning a Notice of Change and are refusing to process them unless a full chain of title is provided from the current owner to the previous owner. In some instances, such as on the Bear River drainage, the Department records do not reflect a change in the owner of the water right from what was established at the time of the 1920 Dietrich Decree. This requirement places a considerable burden on the new property owner to go to a title company to have the title researched and copies of all deeds and the chain of title provided, often at an expense of several hundred dollars. Additionally, we are required to expend considerable time in reviewing the chain of title to prove a negative, i.e., that someone else does not own the water right. In some circumstances there can be literally dozens of deeds to be examined in order to sort out title questions at considerable expense of us as the lawyers representing the property owner, as well as additional administrative review burden on the Department's technical specialists.

As you are well aware, Idaho Code §42-242 does require that "all persons owning or claiming ownership of a right to use the water of the state . . . shall provide notice to the Department of Water Resources of any change in ownership . . . which occurs after June 30, 2000." Further, that "notice shall be provided within 120 days of such change using forms acceptable to the Director." The statute also provides a \$100 late filing fee in addition to the usual fee. Nothing in the statute requires

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that chain of title information be provided, nor are there any Department regulations that I could locate addressing the matter. The Notice of Change in Water Right Ownership form in paragraph 6 lists required items which include (1) the conveyance document (warranty deed, court decree, contract of sale, etc.), (2) plat map, survey map or aerial map which clearly shows the place of use and point of diversion, etc.; (3) filing fee.

Eastern Region indicates that the basis of this chain of title information requirement is your Administrator's Memorandum, Record 9, dated 8/5/2008, copy of which is enclosed for your convenient reference. I find nothing in Idaho Code, case law, the Department's rules or this Memorandum that authorize, require or direct the chain of title information be provided. It seems particularly unnecessary in this case since the water right is not split and the current owner owns all of the property at the place of use in the original Decree, in this case the 1920 Dietrich Decree on the Bear River. In particular paragraph 2 states:

“It is important to note that Idaho Code §§42-248 and 42-1409(6), do not provide the Department with authority to change the legal ownership of a water right. Under the statutes, the Department only has authority to record a change of ownership that has already occurred through proper conveyance.”

It goes on to provide in paragraph 2.1 that “Deeds are true conveyance documents and are the best evidence to demonstrate a change in the ownership of the land or the water right has taken place.”

Enclosed is a copy of the most-recent letter received from Technical Records Specialist Jonie Barg in Eastern Region sending back a Notice of Change we submitted on behalf of Blair Matthews pertaining to Dietrich Decree water right 13-961. As you can see, while we fully provided everything required by the Notice of Change form, the Notice was returned and won't be processed until we have provided “a full chain of title back to the current owner according to the Department's records,” which is the owner reflected in the 1920 Dietrich Decree. In the case of this notice, the property owner, Blair Matthews, provided a Warranty Deed, Title Insurance Policy and current property tax notice to confirm that he is the current owner of all of the land which was the place of use reflected in the Decree. I presume the reason for the chain of title request is to provide the Department with a level of assurance that someone back in the history from 1920 to 2012 didn't transfer or split off the water right. While this may be a legitimate objective, it seems to create not only a financial burden on the landowner and more work for the Department, but more importantly a disincentive to file a Notice of Change.

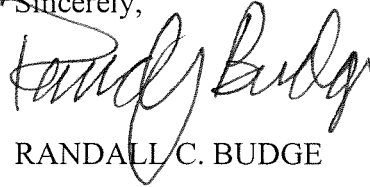
Title insurance companies will not insure or deal with water rights in any manner, which are an exclusion from their coverage and title work. While our firm and I would guess, most attorneys in the Water Bar, make sure that a Notice of Change is filed with IDWR as a part of any real estate transaction, most others do not. It would seem the better policy would be to encourage owners to file a Notice of Change timely rather than create an additional impediment and expense resulting from the full chain of title requirement.

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If you believe this is a good policy to have, then this additional requirement should be not arbitrarily requested, instead supported by Rule, Order or another administrative memo and spelled out on the Notice of Change form and instructions. This chain of title requirement certainly should be unnecessary if the Department's records reflect that water has in fact been delivered to the water master historically and to the new owner. This is information readily available to the Department technical folks.

Having observed your efforts and success in streamlining some of the Department's administrative processes, this is one you might take a look at. Thanks for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Randall C. Budge". The signature is fluid and cursive, with the first name "Randall" being more prominent and the last name "Budge" following in a similar style.

RANDALL C. BUDGE

RCB:rr

Enclosures

cc: James Cefalo (Eastern Region)
Jonie Barg (Eastern Region)

ADMINISTRATOR'S MEMORANDUM

To: Water Management Division Staff
From: Gary Spackman *Gary S*
Re: **PROCESSING NOTICES OF CHANGE IN WATER RIGHT OWNERSHIP AND ASSOCIATED UPDATES TO WATER RIGHT RECORDS**
Date: August 5, 2008

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1 Background

This memorandum provides guidance for the review and processing of notices to change water right owners and for making associated updates to water right records. Idaho Code §§ 42-248 and 42-1409(6) provide statutory requirements regarding notices to change ownership and associated updates to water right records. In addition, Idaho Department of Water Resources (Department) Administrative Rules and case law relating to conveyance of property and water rights may apply to review and processing of the notices.

It is important to maintain the proper owner names and addresses on all water right records of the Department to ensure that all water right owners are properly notified concerning any action proposed or completed by the Department. The guidance in this memo should be applied to water right applications, permits, licenses, decrees, claims, and recommendations for water rights. Circumstances not covered in this memo should be referred to the Department's legal staff for review.

There are several types of notices related to ownership and contact information for water right records. A Notice of Change in Water Right Ownership or an Assignment notifies the Department that the owner of a water right, application, or permit has changed. A Notice of Address Change notifies the Department that the address for an existing owner or contact has changed. A Notice of Security Interest notifies the Department that a security interest in a water right or permit exists. Upon proper notice, the Department is required to notify the security interest holder of any proposed or final changes to the water right. Each type of notice is discussed in detail in this memo.

2 Change in Ownership

A Notice of Change in Water Right Ownership is filed with the Department when a water right is conveyed, either with the land or separate from the land, to a new owner. The purpose of the notice is to inform the Department of the change so it may update its record of the current owner of the water right. It is important to note that Idaho Code §§ 42-248 and 42-1409(6), do not provide the Department with authority to change the legal ownership of a water right. Under the statutes, the Department only has authority to record a change in ownership that has already occurred through proper conveyance.

A perfected water right is real property, just like a parcel of land. Idaho Code § 55-101 defines real property to include land and water rights. Idaho Code § 42-101 provides that a water right shall not be considered as being a property right in itself, but shall be an appurtenance of the land. A water right is usually conveyed concurrently with the land as an appurtenance. Idaho Code § 42-220 provides in pertinent part as follows:

[A]ll rights to water confirmed under provisions of this chapter, or by any decree of court, shall become appurtenant to, and shall pass with a conveyance of, the land for which the right of use is granted.

The Idaho Supreme Court has confirmed that a water right is an appurtenance to the land on which it has been used and will pass with a conveyance of the land unless reserved in the deed:

[I]t is well established that a water right is an appurtenance to the land on which it has been used and will pass by conveyance of the land. A division of the land would divide the appurtenant water right in the same proportion as it divided the land. In this case the twenty acres of land was deeded *together with the appurtenances*. This conveyance would carry with it the water right appurtenant to the land at the time of the conveyance, unless it was specifically reserved in the deed or it could be clearly shown that it was known to both parties that the water right was not intended to be conveyed.

Russell v Irish, 20 Idaho 194, 198, 118 P 501, 502 (1911) (emphasis in original).

A perfected water right can also be separately conveyed by the same means that land is conveyed. A separate conveyance or an express reservation of the water right when the land is conveyed severs the water right as an appurtenance to the land.

2.1 Evidence of Ownership

Generally, some type of deed, contract of sale or other conveyance document is used to convey land and/or a water right to another party. It is important to review the entire document and ensure that attachments submitted are actually part of the deed or contract. Deeds are true conveyance documents and are the best evidence to demonstrate a change in the ownership of the land or the water right has taken place.

There are several types of deeds that are often used to convey property. Common types of deeds are described below.

2.1.1 Quitclaim Deed

A quitclaim deed serves to convey any interest that may be held in property but does not contain any warranty of valid interest or title to the property. In other words, a quitclaim deed does not provide any assurance that the grantor has any interest in the property to convey. If other documentation exists that establishes that interest, then a quitclaim deed could be considered sufficient evidence of new ownership.

If a quitclaim deed were provided showing conveyance of the property from the last known recorded owner of the water right, there is some confidence that the grantor has an interest in the water right to convey. Therefore, the Department would process a water right ownership change based on the quitclaim deed. There is some risk of error, because the grantor may have sold the property to someone else first. If conflicting information arises, a complete chain of title may be necessary to resolve questions.

2.1.2 Grant Deed

A grant deed contains warranties against prior conveyances or encumbrances. In other words, a grant deed provides assurance from the grantor that the property has not already been conveyed or encumbered. A water right ownership change based on a grant deed should be processed using the same guidance described for a quitclaim deed.

2.1.3 Warranty Deed

A warranty deed provides assurance that the grantor is the owner of the property and includes language that the grantor will defend title to the property. The Department will generally process a water right ownership change on the basis of land ownership unless there is additional information that brings ownership of the water right into question.

2.1.4 Deed of Trust and Mortgage

A deed of trust and a mortgage are not conveyance documents, but instead are two different ways to protect the interests of a lender in real property transactions. A deed of trust creates a lien and allows a trustee to foreclose on the property on behalf of the lender if the debt is not paid. A mortgage is also a security instrument that creates a lien on the property and allows the lender to foreclose in a court of law. A deed instead of a deed of trust or mortgage documents should be relied upon as evidence of ownership of the property. Deeds of trust and mortgages are acceptable to demonstrate a security interest in a water right for purposes of notification under Idaho Code § 42-248(6).

2.1.5 Correction Deed

A correction deed is used to correct minor errors on the original deed. A correction deed is not generally appropriate to correct significant errors or to add to a conveyance. Corrections may consist of pen-and-ink changes to the original deed, or a new deed, depending on the type of change. The grantor must execute the correction to be valid.

2.1.6 Other Types of Deeds

There are other types of deeds used to convey real property, such as a personal representative deed or a trustee deed. Most are some form of the deeds described above with modifications depending on the specific purpose and the status of the grantor. It is important to note that the title of the deed may not accurately describe the type of deed. The actual conveyance language, including warranties, will best characterize the type of deed.

2.2 Other Evidence of Ownership

Although deeds are the best and most common and certainly the preferred means for conveying real property, there are other documents that can be used as sufficient evidence of ownership of a water right. A contract for sale, final will and testament, a court decree, and a title insurance policy are examples of documents that can be used as evidence of ownership of a water right. In addition, a change in the place of use through a transfer of water rights pursuant to Idaho Code § 42-222 can result in a change in ownership of a water right.

2.2.1 Contract of Sale

A contract of sale is an agreement between a buyer and seller for payment and other conditions of the sale. A contract of sale generally includes a schedule for payment by the buyer. Some contracts of sale have the seller maintaining legal title to the property until the contract has been completely paid off. In those cases, both buyer and seller should be listed as current owners of the property until the deed is conveyed to the buyer after the last payment is completed at the end of the contract. Once the property is deeded to the buyer, he/she can submit an ownership change notice to remove the seller as a current owner. The contract should be reviewed for other instructions regarding ownership. An alternative to listing both buyer and seller as current owners would be for the seller to provide notice of a security interest to the Department (see below for notice procedures).

2.2.2 Purchase and Sales Agreement

A generic purchase and sales agreement is not the same as a contract of sale of property; it is a preliminary document stating terms and conditions for the purchase of property. A purchase and sales agreement should not be considered sufficient evidence of ownership of property because it does not confirm that property has been conveyed.

2.2.3 Final Will and Testament

A final will and testament is another document that may suffice as evidence of ownership of property. It is important to read the text regarding conveyance of the property for exclusions or restrictions when reviewing for evidence of ownership. A well drafted will should provide the authority for the legal representative of the estate to issue some type of deed to transfer the property of the estate.

2.2.4 Title Insurance Policy

A title insurance policy can be used as evidence of ownership of property. The buyer acquires title insurance to protect against claims against the property. Title insurance policies name the insured and describe the property and the condition of title but do not convey title. If there is conflicting information, there is probably an instrument number listed in the policy for an actual deed which should be examined. A commitment for title insurance or other preliminary document should not be used as evidence of ownership of the property.

2.2.5 Court Decree

A court decree may also be used as evidence of property ownership. Divorce decrees and quiet title actions are examples of court rulings that may determine ownership of a parcel of land and/or a water right. Many court decrees require that the property at issue be transferred by deed and that deed will need to be reviewed before taking action.

2.2.6 Tax Notices

Tax notices should not be used as evidence of ownership. The name on the tax notice does not necessarily indicate ownership. In addition, the tax notice generally does not provide a complete description of the property and does not describe conveyances or exclusions associated with the property.

2.2.7 Transfer

A transfer of water rights pursuant to Idaho Code § 42-222 (for a change in place of use), once accomplished, can result in new ownership of the water right. However, there may be an agreement precluding a change in ownership as a result of the transfer.

2.3 *Language Used to Convey or Exclude Water Rights*

A deed or other conveyance document submitted as evidence of ownership of a water right should be reviewed for any language that may include or exclude specific water rights. The following examples confirm the conveyance of water rights with the land. It should be noted that the appurtenance language is not necessary to convey the water rights, but language excluding water rights is necessary if the seller intends to withhold any appurtenant water rights. In addition, specifically listing some of the appurtenant water rights, but not listing others, should not be interpreted to exclude the unlisted appurtenant rights from the conveyance.

The following examples merely restate the concept that water rights are conveyed with the land.

"... said premises, with their appurtenances..."

"...together with all water and water rights belonging to or appertaining to all the above described land."

The next example describes a water right to be included, but should not be interpreted to mean the conveyance is limited to the described water right. All appurtenant water rights are still conveyed with the land. In addition, the described water right is not necessarily conveyed in its entirety; only the portion of the right appurtenant to the land is being conveyed.

"...together with all water rights, ditches and ditch rights used thereon or appurtenant thereto including but not limited to State of Idaho, Department of Water Resources Water Right No. 43-4221."

The next example conveys a proportional share of a specific right or rights, but should not be interpreted to mean the conveyance is limited to the described right(s). All appurtenant water rights are still conveyed with the land.

"Together with prorata share of Rainey Creek water...appurtenant to above mentioned property."

The next example conveys all appurtenant rights; however, a specific quantity is specified for one of the rights. The quantity specified may or may not be proportional to the land conveyed.

"Together with all water rights appurtenant thereto, including but not limited to 140 inches of decreed water."

The next example conveys all of a particular right, but should not be interpreted to mean conveyance is limited to the described right. All appurtenant water rights are still conveyed with the land.

"And all rights to Water Right No. 43-4221..."

The following are examples that have been used to exclude a right or rights from conveyance with the land.

"...excluding water right no. 43-4221..."

"Excluding as non-appurtenant any and all water diverting from Raymond Creek."

The next example appears to exclude all water rights from the conveyance.

"This property is conveyed dry without water shares."

If the language is ambiguous in the conveyance document, clarification may need to be sought through other available documentation associated with the conveyance of the property. Use of a quitclaim deed could clarify ambiguities. Disputes would need to be resolved through a quiet-title action by a district court.

2.4 When is a Notice Required?

A notice is required for changes in ownership from one individual to another, from an individual to a business entity (even if the business is owned by the individual), or from one business entity to another (even if both businesses are owned by the same individual). The same would apply to trusts, partnerships or other organizations.

In some cases, an individual desires to add another person, such as a new spouse or child, as an owner of the water right. In other cases, an individual desires to remove a person as an owner of the water right (e.g. after a divorce). The Department cannot record a change in ownership of a water right unless accompanied by proper notice of the change, including sufficient evidence of the change. Adding or removing a name should be considered an ownership change subject to the filing fee and should not be processed without the appropriate evidence. One exception is the death of a spouse or other individual listed as an owner of the water right. The Department will accept a signed letter from the living spouse and a death certificate as sufficient evidence to remove the name of a deceased individual from a water right. Removal of the name of a deceased person should not require payment of the filing fee.

The death of an individual listed as an owner of a water right may result in a change in the ownership of a water right to a trust or beneficiary. Such a change is considered a change in ownership subject to the requirements of evidence and a filing fee.

Changes to a water right owner's name do not necessarily constitute a change in ownership of the water right. For example, an individual may make a name change through marriage, divorce, or judicial petition. Another example is a name change for a business entity (not to be confused with a change to a different business entity). Such name changes do not constitute an ownership change and should not require payment of the filing fee. Changes to Department records can be made after proper notice and evidence of the change is received from the water right owner. Documentation for a name change to a business entity can be obtained from the Secretary of State's web site for a business entity search.

2.5 Ownership Change Forms and Filing Fees

The Department provides a form for notifying the Department of an ownership change. The new owners must submit the completed form with evidence of the ownership change and the appropriate filing fee. A filing fee is not required for a notice associated with a claim pending in an adjudication of water rights. Once the right is decreed, the statutory filing fee is required. The fee also applies to all other rights including those not claimed in a pending adjudication. The statutory filing fee is currently \$25 per water right or \$100 per right if the right is to be split based on the owner change. An application for transfer filed under Idaho Code § 42-222 accompanied by evidence of a change in ownership of a water right will not require a separate notice and fee for the ownership change.

2.6 Water Rights not Held by the Landowner

Water rights associated with a water delivery entity such as a canal company, irrigation district, or municipality are held in the name of the delivery entity and would not be subject to a change in ownership if a parcel of land within the service area is conveyed to a new owner. The same guidelines should be used for water rights acquired and held by a water users association or homeowners association.

Sometimes water rights are excluded from a conveyance of land and are no longer appurtenant to the land described as the place-of-use under the water right. This is often done in preparation for a transfer to be filed under Idaho Code § 42-222 by the original landowner, to change to a new place-of-use. In other cases, it may be intended that the water right remain unused at the original place-of-use and held under separate ownership to mitigate for some other water use at another location. Since these water rights are not appurtenant to the land, evidence of ownership of the land would not be sufficient to show ownership of the water right. These situations, if known to the Department, should be documented in the water right file for future reference.

The Idaho Supreme Court confirmed that a landowner could establish and own a water right developed on federal land leased and used in association with the landowner's deeded land (see *Joyce Livestock Co. v. U.S.*, 144 Idaho 1, 156 3d 502 [2007]). This decision applied to an instream stockwater right, but could also apply to other uses, such as a mining operation where federal land is leased and water rights are developed on the federal land for use in association with land owned by the mining operator. The lease agreements should be reviewed for information regarding ownership of water rights developed as a result of the lease.

2.7 Reviewing and Processing Changes in Ownership

A notice to change ownership of a water right must be signed by the new owner and include appropriate evidence of ownership and fees as described above. A signature by at least one of the new owners or authorized representative should be considered sufficient for the notice. Review of the notice should start with a review of the existing records of the Department to determine the appropriate records to update.

For water right claims pending in an adjudication, updates need only be made to the adjudication record unless the record is based on a permit (see Assignment of Application or Permit below). The adjudication record contains the most recent contact information and will supersede the water right record once decreed. If the Department receives a notice listing water rights (unclaimed or recently decreed) along with pending adjudication claims, a complete copy of the notice with all documentation should be forwarded to designated staff for processing and updating the appropriate records. Ensure that water right records have been properly updated by recent decree data before attempting to update the record with a new owner. Data entry to a pre-decree water right record will be overwritten when the decree data is moved from adjudication records. If the court has issued a partial decree, but the recommendation data has not been moved to the water right record, update the water right record and close the recommendation before processing an ownership change notice.

When processing ownership changes, there may be discrepancies between the information listed on the notice and the information on the deed or other conveyance document. The deed or other conveyance document should be the basis for the change. The deed or other conveyance document should be used to determine the owner's name (or names if multiple owners), name connectors, property descriptions and exclusions and split quantities. One exception is the current mailing address for the owner (see Change in Address below). Other information submitted with the notice should not be used as the basis for change, especially if it conflicts with information in the deed or other conveyance document.

2.8 Example Situations

Ownership changes for water rights authorizing domestic use are the most prevalent type of owner changes processed by the Department. Although processing can be fairly straightforward, situations arise that complicate

processing because of the small size of domestic parcels and the general quarter-quarter section legal descriptions used for the associated water right records. A decree or a license describing a quarter-quarter section as the place-of-use for the water right could apply to a number of different domestic parcels within the same quarter-quarter. Department records indicating current and previous owner names can be used in comparison to the grantor's name listed on a deed conveying the property.

Sometimes the holder of a domestic water right subdivides his/her parcel and sells the vacant portion. If the new owner files a notice and provides a deed from the prior owner for land in the correct quarter-quarter, it could be processed in error because ownership of the portion of the parcel with the original domestic use is not changed. If information is available in the water right or claim file, it can be used to investigate further. Information such as parcel number, priority date (to indicate relative age of the home), and maps illustrating the locations are often helpful in determining the place-of-use associated with a particular right.

Large irrigated parcels are being split up for subdivisions in many parts of the state. As individual lots are sold within the subdivision, portions of appurtenant water rights are often inadvertently conveyed to the lot owners with the land. The original owners or developers may have had plans to sell or transfer the water rights for some other place of use, or they may have wanted to convey the entire right to a single community water supplier. They are unable to carry out their plans because they have already conveyed portions of the right when the lots were sold. In this situation, because they no longer own the water right (or portion), a quit-claim deed from the original owner or developer to a third party may not be effective to convey the right. If a water right was inadvertently conveyed to a lot owner, a quit-claim deed conveying the water right from the lot owner to the appropriate party can correct this situation.

Multiple water rights listing a permissible place of use (PPU) can present complications related to ownership changes. Since each of the rights is appurtenant to the commonly described place-of-use, the rights are generally conveyed together (in whole or in part). If the seller desires to convey only one of the rights with a subdivided parcel of land, the deed or other conveyance document must specify the right to be included (in whole or in part) and exclude the remaining rights from the conveyance.

Subdividing a large irrigated parcel can also lead to questions about the point(s) of diversion described under the water right. If a parcel is subdivided into multiple parts, then each new owner's portion of the water right should list all of the original points of diversion unless the conveyance document provides other instruction. If a new owner wants to add a point of diversion to one of the subdivided parts, a water right transfer under Idaho Code § 42-222 would be required.

Sometimes an error in the place-of-use listed on the water right is identified that prevents a new owner from proving ownership based on their deeds or other conveyance documents. Simple clerical errors initiated by the Department can

be corrected through an administrative process for licenses or transfers issued by the Department. The Department cannot change an error identified on a decree issued by a court. The court may provide for an error correction process or the new owner may need to pursue a motion to set-aside or amend the decree with the court. As an alternative, the new owner may choose to file a transfer pursuant to Idaho Code § 42-222 to change the place-of-use listed on the decree. The Department should carefully review the transfer to confirm that the transfer can proceed based on a simple clerical error. If not, authorization from the owner of the land listed on the water right might be required in order to process the transfer.

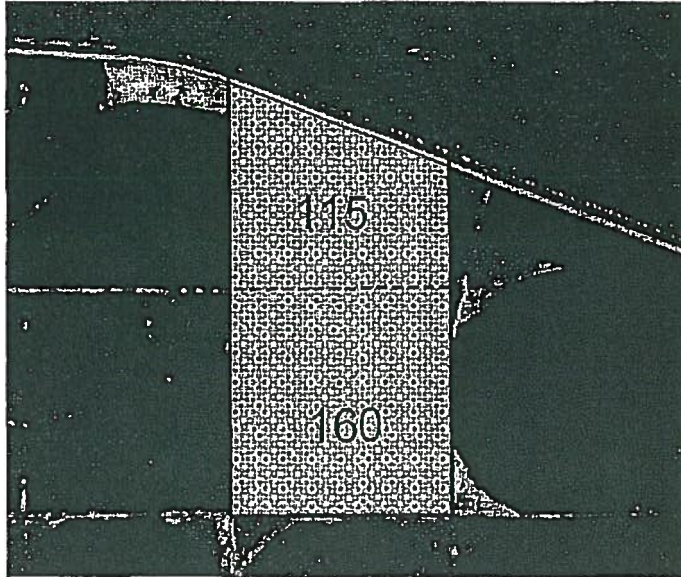
Occasionally, a water right is described through a decree or otherwise where the decree owner does not own, nor has ever owned, all the described parcels of land listed on the decree. This often happens where the landowner owns land adjacent to BLM or other federal or state land, but may occur in other situations. The deficient parcels are usually a very small percentage of the total land area described under the water right. If a notice is filed for the entire water right, and the new owner cannot provide documentation of ownership of the entire water right, and all efforts to work with the owner regarding splits, changes by the court, transfer, quit claim, or otherwise have been exhausted, then the notice could be processed by listing the new owner as the current water right owner without a split as long as Department records indicate that there are likely other owners based on information available to the Department. If sufficient information is available, the additional owner(s) could also be listed in the water right record. However, since the other owner(s) would not have filed a notice, the Department should not list them as "current" owner(s). The Department has historically listed an owner as "present" owner where there is some information indicating ownership, but where a notice with evidence has not been filed. This practice should not be used where there is a significant interest in the water right held by other owners. In addition, in the case of a future transfer of the water right, the ownership issue must be resolved prior to transferring any portion of the lands in question.

2.9 Processing Owner Changes Resulting in Split Rights

When land is subdivided the appurtenant water right(s) is also split or divided based on the appurtenant portion of the water right unless otherwise stated on the deed or other conveyance document. For example, if a water right completely covers a parcel of land and the land is subdivided into two equal parts and one or both parts are sold, then the water right would also be split into two equal parts.

Another example with a different result would be a water right covering only a portion of a parcel of land and the land is subdivided into two equal parts. Each subdivided portion of the land would only be conveyed a portion of the water right based on the amount that was appurtenant. The figure below illustrates the situation.

Owner Change Split



Parcel
320 acres

Water Right
5.5 cfs on 275 acres

Parcel split into two parts
(North and South)

Water Right split is:
 $115/275 = 42\%$ (North)
 $160/275 = 58\%$ (South)

Water rights with conditions limiting rate, volume, acres or some other limits should be adjusted to reflect the proportional amounts resulting from the split. In addition, digital shapes for the place of use and point of diversion should be updated to reflect the split in the Department's database.

Another PPU complication arises when a water right lists a place of use for irrigation of a number of acres, but the water right is conditioned to limit the number of acres that can be irrigated during a single irrigation season within the PPU. For example, a water right lists a PPU of 100 acres but is limited to irrigation use on any 60 acres within the PPU. If the 100-acre parcel is subdivided into two 50-acre parcels, then each parcel would be conveyed a 30-acre portion of the right to be used within the corresponding 50-acre parcel (unless the conveyance document specifies otherwise).

A deed or other conveyance document might list multiple owners, each with some specified undivided interest in the property. An undivided interest does not result in splitting the water right; the specified owners would all be listed as owners of the water right. Comments can be added to the Department's database to indicate the percentage specified for each owner.

Some conveyances create complications that cannot be easily resolved by splitting the right. For example, a conveyance that appears to split a domestic right for one home into two parts could, if split, create the misconception that two homes would be authorized under separate domestic rights. If the issue cannot be easily resolved, the right could show multiple owners, but should not be split. Some domestic rights may include more than one home, but are limited to a statutory volume of 13,000 gallons per day. If the right is split to

show one home for each part, a statement should be added to the record (in conditions) indicating that both (or all) parts are limited to 13,000 gallons per day in combination.

3 Assignment of Applications, Permits, and Transfer Applications

A water right permit is considered personal property, not real property. Water Appropriation rule 35.02(d) indicates an applicant's interest in an application for permit is also personal property. Other water right applications (e.g. transfer) before the Department are considered personal property as well. Since applications and permits are personal property, they are not conveyed as an appurtenance to the land. Conveyance is normally accomplished through an assignment by the application or permit owner. Conveyance could be accomplished in conjunction with a deed conveying land if the application or permit is specifically stated on the deed and the grantor (assignor) is the application owner or permit owner based on Department records.

The Department provides a form for filing an assignment of permit. A statutory filing fee, currently \$25, must accompany an assignment of permit. Water Appropriation rule 35.04(f) requires notice to the Department if an application for permit is assigned to a new owner, but there is no fee to file an assignment of an application. An application or permit can also be assigned by the owner to another party in a deed or through a bill of sale as long as appropriate language is included indicating the assignment or conveyance of the application or permit with a notarized signature of the owner.

3.1 Application for Amendment of a Permit

An application for amendment of a permit filed pursuant to Idaho Code § 42-211 can suffice as notice of an owner change for a permit (without separate notice and additional fee) but must include documentation conveying or assigning the permit as personal property from the permit holder. A deed conveying the associated land is not sufficient (unless the permit is also specifically conveyed in the deed by the permit holder).

3.2 Assignment of Permit for Power Purposes

Idaho Code § 42-207 requires an assignment of a permit for power purposes to include qualifications of the new owner to show residency in the State of Idaho (for an individual) or qualifications to do business in Idaho (for a business entity). In addition, the statute requires that the assignment be made in good faith and not for purposes of speculation or delay.

3.3 Processing Assignments Resulting in Splits

An application or permit can be assigned in part. No additional fee is required to split a permit. The assignment should clarify the split portions including the associated place of use to be divided. If information cannot be obtained to split the application or permit, the ownership record can be updated to show more than one owner with comments in the database indicating multiple ownership.

Resolution of the split portions for permits may need to wait until proof is submitted and a field exam conducted for licensing purposes.

3.4 *Permits Pending in an Adjudication*

For permits pending in an adjudication, updates to the ownership record should be made to both the adjudication and permit records since the permit record will not be superseded by a decree. The ownership record for a claim should not be updated on the basis of conveyance of the land unless the permit is also specifically conveyed in the deed or other conveyance document. An assignment of permit received by adjudication staff, once processed for a claim, should always be forwarded to water right staff for processing related to the permit record.

3.5 *Permit Not Assigned to New Landowner*

Many changes in land ownership occur without an assignment of a water right permit that is associated with the land. If water has been diverted and beneficially used, but not yet licensed, experience has shown that in most cases the seller of the property probably intended to convey the permit with the land. For reinstatements, proof submittal, or licensing amendments, the Department has accepted forms signed by the current landowner if the current landowner can show an appropriate interest in the property and the current landowner has not been able to contact the permit holder for an assignment. The Department should attempt to contact the permit holder of record. Upon objection, the Department will hold an administrative hearing on the matter as necessary. See Administrative Memorandum - Permit Processing No. 10, dated December 1, 1988, for more information.

When proof of beneficial use or a request for reinstatement is submitted for a permit that was not assigned to the new landowner (or permit owner), the Department will not change the ownership of the permit without a notice of change, fee and sufficient evidence of ownership of the permit (e.g. a court decision in a bankruptcy proceeding determining ownership specifically for a permit), but will accept the signature of the new landowner for the filing as described above. Such evidence when filed with an application for amendment of a permit pursuant to Idaho Code § 42-211 (including licensing amendments) will *not* require a separate notice and fee as described in Section 3.1 above.

If the new landowner submits a notice of change and fee along with evidence of ownership of the land described as the place-of-use under the permit, the Department will consider the filing premature and hold processing of the owner change until licensing, at which time the Department will issue the license in the new owner's name. Because the filing is considered premature, a separate notice and fee is required even when filed in conjunction with an application for amendment of a permit.

4 Notice of Security Interest

A security interest in a water right can be acquired through a mortgage, deed of trust, contract or other agreement where the property (i.e. the water right or land with associated water right) is used to secure payment of an obligation such as a loan. Evidence of a security interest would be the mortgage, deed of trust, etc, identifying the property used as security.

Although notice to the Department is not required, any person or entity having a security interest in a water right and desiring notification from the Department regarding any proposed or final action or changes to the water right must file a Notice of Security Interest on a form provided by the Department with the appropriate fee of \$25 per water right. Note that, unlike a notice for change in ownership, a notice of security interest filed on a water right pending in an adjudication is not exempt from the filing fee.

A notice of security interest should be processed by adding the secured party to the water right or adjudication record with a "security interest" owner type. For water rights pending in an adjudication, updates need only be made to the adjudication record unless the record is based on a permit. The adjudication record contains the most recent contact information and will supersede the water right record once decreed. For permits, the security interest should be added to both the permit and adjudication records since the permit record will not be superseded by a decree. All correspondence relating to an action or change to the water right, claim, recommendation or permit must be copied to the secured party until the security interest expires or is terminated by the secured party. When a record is updated due to an ownership change, including splits or through a transfer, the security interest owner should remain as part of the record(s) to ensure that they receive notice of the change through the Department's database workflow processes. A security interest can be removed from a record upon notice to the Department that the interest has terminated, or at the end of the designated term of the security interest.

5 Change of Address

Water right owners are required to notify the Department of changes in their mailing addresses. In addition, Water Appropriation rule 35.04 (f) requires notice to the Department if an applicant's address changes. Idaho Code § 42-248(3) provides, "The director of the department of water resources will be deemed to have provided notice concerning any action by the director affecting a water right or claim if a notice of the action is mailed to the address and owner of the water right shown in the records of the department of water resources at the time of mailing the notice." It is important to update the records accordingly once notice of an address change has been submitted to ensure water right owners receive notice of any action regarding their rights or applications.

The Department can receive notice through a Change of Address form submitted to the Department, or by a letter indicating the new address and signed by the owner(s) of the water right, claim, permit or application. Notice can also be accomplished through other Department forms (e.g. a water right transfer or well drilling application) indicating the new address with proper signature on the document. The Department

can also update the address for a contact through notice provided by the Post Office. There is no fee for a change of address.

The Department's database was designed to share contact records between business processes in order to avoid duplication of records, to speed up data entry, and to maintain current records across all processes. Design of the database allows an address change to be updated through a single business process with automatic updates to linked records across multiple business processes. This update process requires data entry of the business process and file location where the paper notice can be found for future reference.