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July 25, 2012

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Re: *Water Right 13-961 – Blair Mathews
Notice of Change in Water Right Ownership*

Dear Jonie and James:

This will follow up on my recent conversations with each of you regarding the above-referenced Notice of Change in Water Right Ownership which we submitted on behalf of the current owner Blair Mathews with my letter dated June 11, 2012, which was returned in its entirety with Jonie Barg's June 13, 2012 letter. The return letter states "In order for the Department to complete your request a full chain of title back to the current owner according to the Department's records is required, the current owner of the water rights according to our records is Justin Pond, David Bartlome and L.A. Pond."

For the reasons discussed below I am returning herewith my June 11, 2012 letter to you with enclosed Notice of Change in Water Right Ownership, check for filing fees, and stamped and addressed envelopes and respectfully request that you proceed to process the Notice of Change. I am also enclosing a copy of the owner Mathews' current Title Insurance Policy which further

confirms ownership of the property which includes the entire place of use. The owners in the Department's records you refer to are those identified in the 1920 Dietrich Decree when the Bear River and its tributaries were adjudicated in Idaho.

The reason for this return and request that the Notice of Change be processed is because there appears to be no factual or legal basis for not processing the Notice of Change and for returning it with a request for chain of title information.

Enclosed is a copy of Idaho Code §42-248 which provides that a new owner file a Notice of Change "using forms acceptable to the Director," and pay the required filing fees. Mathews used the form provided by the Director and fully complied with the stated requirements. There is no case law, Department rule, regulation or other authority for the request for chain of title information. You indicated that the basis of this request was Administrator's Memorandum, Records No. 9, dated August 5, 2009, from Gary Spackman, copy of which I have obtained from the state office and enclose for your convenient reference. I have also highlighted the applicable provisions. No where in this memo does there exist any authority for requiring additional chain of title information. I note in paragraph 2 it 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."

Additionally paragraph 2.1 provides: "Deeds are true conveyance documents and are the best evidence to demonstrate a change in the ownership of land or the water right has taken place." Additionally, paragraph 2.2 indicates that "A title insurance policy" is other evidence of ownership. Mathews has provided both to you and nothing further should be required. Also paragraph 2 provides that "a deed or other conveyance document submitted as evidence of ownership of a water right should be reviewed for language that may include or exclude specific water rights." The Mathews deed provided includes all appurtenant water right and does not exclude anything. Paragraph 2.5 of the Memorandum states: "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." Mathews has fully complied with this as well as all other provisions in the Administrator's Memorandum.

I presume the reason for the chain of title request is to provide the Department with some greater level of assurance that someone back in history did not transfer or split off the water right. While this may be a legitimate objective, it creates not only a financial burden on the landowner but more work for the Department. Additionally it creates 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 in title work, while our firm and I would guess most water law attorneys make sure that a Notice of Change is filed with IDWR as a part of a real estate transaction,

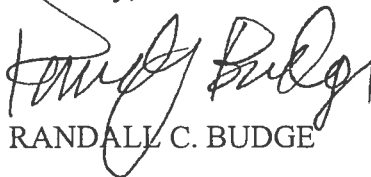
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most others do not. It would seem a better policy to encourage owners to file a Notice of Change rather than to create additional and unnecessary impediment and expense resulting from the full chain of title requirement. If this additional chain of title requirement is going to be imposed, there needs to be some supporting basis for it, which simply does not exist based on information I have been able to identify. As this additional request is becoming more frequent, I am going to take the matter up with Director Gary Spackman to address the issue and provide some clarity and certainty.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Randall C. Budge", written over the printed name.

RANDALL C. BUDGE

RCB:rr

Enclosures

cc: Blair Mathews