

RECEIVED

DEC 23 2010

Department of Water Resources
Eastern Region

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

Notice of Change in Water Right Ownership

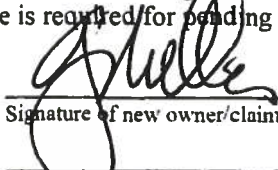
1. List the numbers of all water rights and/or adjudication claim records to be changed. If you only acquired a portion of the water right or adjudication claim, check "Yes" in the "Split?" column.

Water Right/Claim No.	Split?	Water Right/Claim No.	Split?	Water Right/Claim No.	Split?
13-885A	Yes ☐		Yes ☐		Yes ☐
13-886A	Yes ☐		Yes ☐		Yes ☐
13-887A	Yes ☐		Yes ☐		Yes ☐
13-889C	Yes ☐		Yes ☐		Yes ☐
	Yes ☐		Yes ☐		Yes ☐

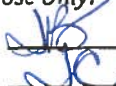
2. Previous Owner's Name: Aram P. Allen; Lionel Merril & Albert Westover
Name of current water right holder/claimant
3. New Owner(s)/Claimant(s): MILLER FAMILY REAL ESTATE, L.L.C.
Name of each new owner as listed on the conveyance document
C/O LARRY MILLER MGMT CO.
New owner continued ☐ Name connector ☐ and ☐ or ☐ and/or
9350 SOUTH 150 EAST NO. 1000
Mailing address
SANDY UT 84070
City State ZIP
801-563-4100
Telephone Email

4. If the water rights and/or adjudication claims were split, how did the division occur?
☒ The water rights or claims were divided as specifically identified in a deed, contract, or other conveyance document.
☐ The water rights or claims were divided proportionately based on the portion of their place(s) of use acquired by the new owner.
5. Date you acquired the water rights and/or claims listed above: May 12, 2003/May, 2008

6. This form must be signed and submitted with the following **REQUIRED** items:
- A copy of the conveyance document – warranty deed, quitclaim deed, court decree, contract of sale, etc. The conveyance document must include a legal description of the property or description of the water right(s) if no land is conveyed.
 - Plat map, survey map or aerial photograph which clearly shows the place of use and point of diversion for each water right and/or claim listed above (if necessary to clarify division of water rights or complex property descriptions).
 - Filing fee (see instructions for further explanation):
 - \$25 per *undivided* water right.
 - \$100 per *split* water right.
 - No fee is required for pending adjudication claims.

7. Signature:  Gregory S. Miller, Operating Managr 12/20/2010
Signature of new owner/claimant Title, if applicable Date
- Signature: _____ Title, if applicable Date

For IDWR Office Use Only:

Received by  Date 12/27/2010 Receipt No. E0316330 Receipt Amt. 100.-
Approved by  Processed by  Date 6/5/2012

SUPPORT DATA
IN FILE # 13-885A

21010970

QUITCLAIM DEED

FOR VALUE RECEIVED

CLAIR D. BOSEN and VIOLA L. BOSEN, husband and wife, Grantor

do(es) hereby convey, release and forever quitclaim unto: MILLER FAMILY REAL ESTATE, L.L.C., a Utah limited liability company, Grantee

whose current address is: 9350 South 150 East, Suite 1000, Sandy, Utah 84070
the following described premises, to-wit:

Located in Bannock County, Idaho:

TR NW4SW4 TAX 9 5.47 AC S13-T13S-R38E

TR S2SW4 TAX 11 6.82 AC S13-T13S-R38E

SUBJECT TO an easement in favor of Abbott Ranches, Inc., its successors and assigns, over an existing roadway for ingress and egress purposes.

ALSO SUBJECT TO an easement in favor of Abbott Ranches, Inc., its successors and assigns, to allow cattle of the Abbott Ranches, Inc. access to Stockton Creek for watering purposes.

OFFICIAL RECORD BK # 932
BANNOCK COUNTY IDAHO

RECORDED AT REQUEST OF
FEE 3 DEPUTY *mw*

Miller Real Estate

21010970

2010 JUN 30 P 12:11

Date: May 11, 2009. 2010

Clair D. Bosen
Clair D. Bosen

Viola L. Bosen
Viola L. Bosen

STATE OF IDAHO)
COUNTY OF Franklin) ss.

On this 11 day of May, 2009, before me, a Notary Public in and for said State, personally appeared Clair D. Bosen and Viola L. Bosen, known or identified to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first written above.

Bonnie Kay Jensen
NOTARY PUBLIC - STATE OF IDAHO
My Commission Expires 7-7-2012

BONNIE KAY JENSEN
NOTARY PUBLIC
STATE OF IDAHO

FA #P40580

2-1
WARRANTY DEED

20312192

FOR VALUE RECEIVED

BOSEN LAND AND LIVESTOCK, L.L.C., an Idaho limited liability company, pursuant to a resolution by its Members, GRANTOR does hereby grant, bargain, sell and convey unto:

MILLER FAMILY REAL ESTATE, L.L.C., a Utah limited liability company, GRANTEE

whose current address is: 9380 South 150 East, Suite 1000, Sandy, Utah 84070
the following described premises in Bannock County, Idaho, to-wit:

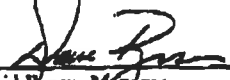
SEE EXHIBIT "A" ATTACHED HERETO

TO HAVE AND TO HOLD the said premises, with their appurtenances, structures and improvements located thereon, and all water rights appurtenant thereto, including but not limited to: 2/7ths of 105 Miners Inches, priority May 3, 1887, from Stockton Creek; 80 Miner Inches, priority June 1, 1879, from Cottonwood Creek; 22.5 Miner Inches, priority June 1, 1887, from Cottonwood Creek; 21 Miner Inches, priority June 1, 1895, from Cottonwood Creek; 150 Miner Inches, priority January 1, 1904, from Cottonwood Creek; and Water Permit No. 18-7127 unto the said Grantee, its heirs and assigns forever. And the said Grantor does hereby covenant to and with the said Grantee that it is the owner in fee simple of said premises; that they are free of all encumbrances except easements, rights-of-way in roads or highways of record.

DATED May _____, 2008.

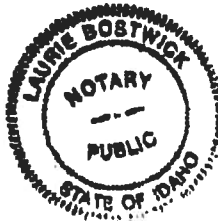
BOSEN LAND AND LIVESTOCK, L.L.C.


CLAIR D. BOSEN, MANAGER


David Bosen, Manager

STATE OF IDAHO, COUNTY OF BANNOCK

On this 1st day of May 2008, before me, a Notary Public in and for said State, personally appeared DAVID BOSEN and CLAIR D BOSEN known to me to be the Manager of BOSEN LAND AND LIVESTOCK, L.L.C., that executed this instrument on behalf of said company and acknowledged to me that such company executed the same.




NOTARY PUBLIC
Expires 12/16/2008

20312192

20312192
FIRST AMERICAN TITLE

RECORDED AT REQUEST OF

FEE 6 DEPUTY DP

2-2

2003 MAY 13 PM 2 10

ATTACHED LEGAL DESCRIPTION OFFICIAL RECORD BOOK 829

Order No.: P40580

LARRY W GHAN RECORDER
BANNOCK COUNTY IDAHO

TOWNSHIP 13 SOUTH, RANGE 38 EAST OF THE BOISE MERIDIAN, BANNOCK COUNTY, IDAHO.

SECTION 13: NW $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$, ALL THAT PORTION OF SW $\frac{1}{4}$ LYING SOUTHEASTERLY OF THE COUNTY ROAD.

EXCEPT FROM THE ABOVE, BEGINNING AT A POINT ON THE EASTERLY RIGHT OF WAY LINE OF COUNTY ROAD, AS THE SAME NOW EXISTS, SAID POINT BEING 70 FEET, MORE OR LESS, WEST OF THE COMMON CORNER OF SECTIONS 13, 14, 23 AND 24; THENCE EAST 2710 FEET, MORE OR LESS, TO THE SOUTHEAST CORNER OF SOUTHWEST QUARTER OF SECTION 13; THENCE SOUTH 1261 FEET, MORE OR LESS, TO THE SOUTHWEST CORNER OF NW $\frac{1}{4}$ NE $\frac{1}{4}$ OF SECTION 24; THENCE EAST 1747 FEET; THENCE NORTH 1071 FEET; THENCE NORTH 41°48' WEST 2482 FEET; THENCE WEST 660 FEET; THENCE SOUTH 62°32' WEST 1321 FEET; THENCE SOUTH 88°32' WEST 1144 FEET; THENCE SOUTH 61°26' WEST 158 FEET, TO THE EASTERLY RIGHT OF WAY LINE OF THE COUNTY ROAD; THENCE SOUTHEASTERLY ALONG SAID EASTERLY RIGHT OF WAY LINE 700 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

SECTION 14: ALL THAT PORTION OF SE $\frac{1}{4}$ SE $\frac{1}{4}$ LYING EAST OF THE COUNTY ROAD. EXCEPT FROM THE ABOVE, BEGINNING AT A POINT ON THE EASTERLY RIGHT OF WAY LINE OF COUNTY ROAD, AS THE SAME NOW EXISTS, SAID POINT BEING 70 FEET, MORE OR LESS, WEST OF THE COMMON CORNER OF SECTIONS 13, 14, 23 AND 24; THENCE EAST 2710 FEET, MORE OR LESS, TO THE SOUTHEAST CORNER OF SOUTHWEST QUARTER OF SECTION 13; THENCE SOUTH 1261 FEET, MORE OR LESS, TO THE SOUTHWEST CORNER OF NW $\frac{1}{4}$ NE $\frac{1}{4}$ OF SECTION 24; THENCE EAST 1747 FEET; THENCE NORTH 1071 FEET; THENCE NORTH 41°48' WEST 2482 FEET; THENCE WEST 660 FEET; THENCE SOUTH 62°32' WEST 1321 FEET; THENCE SOUTH 88°32' WEST 1144 FEET; THENCE SOUTH 61°26' WEST 158 FEET, TO THE EASTERLY RIGHT OF WAY LINE OF THE COUNTY ROAD; THENCE SOUTHEASTERLY ALONG SAID EASTERLY RIGHT OF WAY LINE 700 FEET, MORE OR LESS, TO POINT OF BEGINNING.

SECTION 24: NW $\frac{1}{4}$ NE $\frac{1}{4}$ EXCEPT FROM THE ABOVE, BEGINNING AT A POINT ON THE EASTERLY RIGHT OF WAY LINE OF COUNTY ROAD, AS THE SAME NOW EXISTS, SAID POINT BEING 70 FEET, MORE OR LESS, WEST OF THE COMMON CORNER OF SECTIONS 13, 14, 23 AND 24; THENCE EAST 2710 FEET, MORE OR LESS, TO THE SOUTHEAST CORNER OF SOUTHWEST QUARTER OF SECTION 13; THENCE SOUTH 1261 FEET, MORE OR LESS, TO THE SOUTHWEST CORNER OF NW $\frac{1}{4}$ NE $\frac{1}{4}$ OF SECTION 24; THENCE EAST 1747 FEET; THENCE NORTH 1071 FEET; THENCE NORTH 41°48' WEST 2482 FEET; THENCE WEST 660 FEET; THENCE SOUTH 62°32' WEST 1321 FEET; THENCE SOUTH 88°32' WEST 1144 FEET; THENCE SOUTH 61°26' WEST 158 FEET, TO THE EASTERLY RIGHT OF WAY LINE OF THE COUNTY ROAD; THENCE SOUTHEASTERLY ALONG SAID EASTERLY RIGHT OF WAY LINE 700 FEET, MORE OR LESS, TO POINT OF BEGINNING.

TOWNSHIP 13 SOUTH, RANGE 38 EAST OF THE BOISE MERIDIAN, BANNOCK COUNTY, IDAHO.

SECTION 18: LOTS 1, 2, 3 AND 4; E $\frac{1}{2}$ SW $\frac{1}{4}$

SECTION 18: LOT 1



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720 - (208) 327-7900

CECIL D. ANDRUS

GOVERNOR

R. KEITH HIGGINSON

DIRECTOR

June 18, 1990

Glen T. Merrill
Lynn H. Merrill
Swan Lake, ID 83281

Clair Bosen
P.O. Box 468
Preston, ID 83263

RE: Ownership Split of Cottonwood Creek Water Diverted into
Stockton Creek

Gentlemen:

A question has been raised regarding the proper split ratio of water rights diverted from Cottonwood Creek into Stockton Creek. In my prior letter, dated May 15, 1990, I described four water rights which are apparently the water rights split between Merrill and Bosen. The water rights are:

<u>Right No.</u>	<u>Priority Date</u>	<u>Flow Rate</u>
11-00825	June 1, 1879	2.0 cfs
11-00826	June 1, 1887	1.5 cfs
11-00827	June 1, 1895	1.4 cfs
11-00829	June 1, 1904	14.0 cfs

The above listed water rights are the rights that were transferred by transfer no. 3578, filed by TMT, Inc., to lands owned by Merrills.

Before I venture to analyze the ownership of the rights listed above, I disclaim the accuracy of my cursory review of our records, and the conclusion I draw from them. I have not searched the entire chain of title of the water rights. There may be other documents which I do not possess. I can only rely on those documents that have been submitted to the Department of Water Resources, primarily by TMT, Inc. (or Merrills) in support of transfer no. 3578.

The first document I will refer to is attached as Exhibit #1. It is labeled "Decree of Water Right and Agreement for Construction of Rights of Ways." It appears to be a contract between H. H. & Reda Allen, grantors, and L. Edgar Merrill and E. Lionel Merrill, grantees, for the sale of a portion of the water rights listed above. The contract provides for the purchase by Merrills of a $1/5$ interest in the water rights, and then recites the $1/5$ interest of each of the water rights. I assume that L. Edgar Merrill and E. Lionel Merrill are the predecessors to Lynn and Glen Merrill.

Exhibit #2 is a quit claim deed naming H. H. & Reda Allen as grantors, and A. P. Allen as the grantee. The quit claim deed conveys one half of the original water right quantities before the conveyance to Merrills. For example, right no. 11-00825 authorized diversion of 2.0 cfs. H. H. & Reda Allen conveyed 0.40 cfs to Merrills, retaining 1.6 cfs. By quit claim deed to A.P. Allen, they conveyed an additional 1.0 cfs, retaining 0.6 cfs. The other portions of the original water rights owned by H. H. & Reda Allen were also split and conveyed to A.P. Allen in the same proportion.

Exhibit #3 is a personal representatives deed which purports to deed land owned by A.P. Allen to TMT, Inc. I assume that this land is the land where A.P. Allen applied water diverted pursuant to his water rights. If the water rights were appurtenant to this land, then TMT, Inc. had the right to file an application for transfer proposing a change in the place of use.

I assume that H. H. & Reda Allen were the predecessors to Clair Bosen. If I calculate the residual portions of the water rights retained by H. H. & Reda Allen, I find that they retain $3/10$ of the water rights. Using right no. 11-00825 again as an example, H. H. & Reda Allen retained 0.6 cfs of the original 2.0 cfs, which, when reduced to a fraction, is $3/10$.

According to the information in Department files, Glen T. Merrill and Lynn H. Merrill are entitled to $7/10$ of the above listed water rights, and Clair Bosen is entitled to $3/10$ of the above listed water rights.

I again disclaim total knowledge of the transactions, and can only rely on the records that have been submitted to the Department. If the parties have other records which change the portions of the rights each party is entitled to, I encourage them to submit the documents to the Department.

I believe the above summary is the proportionate split now being followed by the watermaster. I do not believe it is

necessary for the Department to further instruct him regarding the distribution of the rights.

Sincerely,

Gary Spackman

GARY SPACKMAN, Manager
Water Right Permits Section

GS:js

cc: Steven Fuller
Jay McKenzie
Eastern Region
Pete Peterson



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000

Phone: (208) 327-7900 FAX: (208) 327-7866

July 10, 1992

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

Dean Burton
14172 N. Cleveland Rd.
Preston, ID 83263

Re: Cottonwood Creek/Bennion Rights

Dear Mr. Burton:

Since visiting with you early last month, I have found some time to research the Department's files and records for certain water rights on Cottonwood Creek. I apologize for the delay in sending you this response.

During my visit, you had specifically asked about the ownership status and any documentation for those rights which were originally decreed to Edwin Bennion in the Dietrich Decree (Utah Power and Light v. Last Chance Canal Co.). Enclosed with this letter are copies of all transfers associated with the Bennion rights. Also enclosed are several different deeds which help trace some of the ownership of certain Bennion rights. These documents and current ownership or proportionate split of those certain rights are described in a Department letter dated June 18, 1990 by Gary Spackman. Also included are several old Department letters from the 1950's which explain several transfers which occurred at that time.

The Department's records show that the first activity and disputes concerning the Bennion rights go back to 1929. Transfer no. 475 approved on October 21, 1929 moved 5.0 cfs of June 1, 1870 priority (right no. 11-828) and 2.0 cfs of June 1, 1879 priority (right no. 11-825) which were appurtenant to lands in the Cleveland area to the Treasureton Irrigation Co. ditch and lands near Swan Lake. We next find an agreement signed October 31, 1929 between the Upper Cleveland Irrigation Co., the Cleveland Irrigation Co., the Treasureton Irrigation Co., several private individuals and H.H. Allen Jr. Allen appears to have been the beneficiary of transfer no. 475. The agreement stipulates that Allen did not have an interest in the 5.0 cfs June 1, 1870 right. The other parties though did recognize that Allen had an interest in other Banion rights as shown below and consented to a transfer of those rights.

IDWR No.	Amount	Date
11-825	2.0 cfs	6/1/1879
11-826	1.5 cfs	6/1/1887
11-827	1.4 cfs	6/1/1895
11-829	10.0 cfs	1/1/1904

Based on the October, 1929 agreement, it appears Allen had no

interest in the 1.5 cfs, June 1, 1870 Banion right (11-824) in addition to having no interest of right 11-828. It further appears that given this agreement, Allen should have immediately filed a transfer which returned right 11-828 to its original place of use and point of diversion, and then filed another transfer moving rights 11-825, 826, 827 and 829 to the Treasureton Ditch and Swan Lake lands. These transfers however were not filed and approved until 1955. Between 1929 and 1990, a number of deeds were made conveying and splitting portions of the above four Allen rights. These splits and deeds are described in Gary Spackman's letter. Upon review of the deeds and transfers, I concur with Mr. Spackman's analysis concerning the current proportionate split of the four rights and that the rights should be distributed accordingly. Although there is different proportionate ownership of the four rights, all of these rights still appear to be appurtenant to lands in the Swan Lake area. Therefore, the full amount under the original rights would still be delivered to the Treasureton Ditch and then distributed according to the proportionate shares. Delivery of the four rights to the Treasureton Ditch must be made according to available natural flow and relative to other priority rights on Cottonwood Creek.

I hope this review and attached documentation clarifies your questions pertaining to the Banion rights. If you have further questions concerning this matter, or require additional assistance, please contact this office or our office in Idaho Falls.

Sincerely,



Tim Luke
Hydrologist

cc: Pete Peterson
Glen Merrill
Eastern Region