



State of Idaho

DEPARTMENT OF WATER RESOURCES

Eastern Region, 900 North Skyline Drive, Suite A • Idaho Falls, Idaho 83402-1718

Phone: (208) 525-7161 • Fax: (208) 525-7177 • Web Site: www.idwr.idaho.gov

June 5, 2012

C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

TJ Budge
Racine Olson Nye Budge & Bailey
201 East Center Street
PO Box 1391
Pocatello, ID 83204-1391

Paul Arrington
Barker Rosholt & Simpson LLP
113 Main Avenue West, Suite 303
PO Box 485
Twin Falls, ID 83303-0485

RE: Notice of Change in Water Right Ownership for Merrill Ranch and Miller Family

Dear Mr. Budge and Mr. Arrington:

In December 2010, ownership changes were submitted for Merrill Ranch Partnership, LLC (13-885B, 13-886B, 13-887B, and 13-889D) and for Miller Family Real Estate, LLC (13-885A, 13-886A, 13-887A, and 13-889C). This letter is meant to notify you that the ownership changes have been completed. Enclosed are updated records for the water rights.

In October 2011, I sent a letter notifying you of an outstanding issue with the water rights listed on the ownership changes. The number of irrigated acres associated with the rights were not defined, and appeared to be less than what was being irrigated by your clients. Please refer to the October 2011 letter for a detailed description of the problem. Briefly stated, the 1920 Bear River decree and other evidence suggest that all of the Edwin Bennion rights (entry 458 in the 1920 Bear River decree), including three rights that still exist in the Cleveland area (13-884, 13-888, and 13-889A), are limited to 624 irrigated acres.

My letter set forth a short history of the water rights and asked you to conduct some additional research and offer suggestions as to how the 624 acres should be split between the various water rights. I never received a response to my request. Recently, I was contacted by Mr. Merrill, asking why it was taking so long to complete the ownership changes. I told him that I had been waiting for a response regarding the irrigated acre splits.

One of the alternatives proposed in my October 2011 letter was a way to avoid the question of acre limits at this time. The department could simply add a condition to all of the water rights (including the three water rights remaining in the Cleveland area), stating that all of

the water rights, in combination are limited to the irrigation of 624 acres. Having received no response from you, and having no other way to determine the correct number of irrigated acres for each right, I decided to complete the ownership changes by simply adding the proposed condition to the rights.

Although this condition allows us to complete the ownership changes, it still leaves your clients with a large degree of uncertainty. I believe there is value to resolving the question of irrigated acres now, rather than waiting for an adjudication court to address the matter. This may require settlement agreements with property owners in the Cleveland area, forfeiture actions, additional title searches, or quiet title actions. Until the question of irrigated acres is resolved, transfers or other changes involving these rights may not be possible. Please let me know if there is any way I can be of assistance as you work to update these rights.

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

Cc: Glen Merrill, PO Box 22, Swan Lake, ID 83281