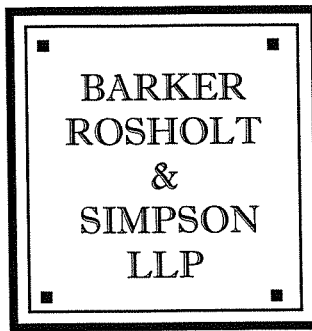


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May 30, 2012

RECEIVED
MAY 30 2012 587
DEPARTMENT OF
WATER RESOURCES

VIA HAND DELIVERY

Danni M. Smith
Technical Specialist II
Idaho Department of Water Resources
322 E. Front St.
Boise, ID 83720

Re: Notice of Change of Ownership

Dear Ms. Smith:

In response to your letter of May 15, 2012, the following information is provided to support Emerald Forest Products Notice of Change of Ownership of Water Rights for water right nos. 65-585, 65-586, 65-587, and 65-7094.

Enclosed is a corrected Notice of Change in Water Right Ownership listing Emerald Forest Products as the new owner of the water rights. The explanatory materials includes a warranty deed dated July 6, 2009, transferring the subject property from Renewable Energy of Idaho, Inc. to Yellowstone Power, Inc. and a corporation deed dated June 9, 2010, transferring the subject property from Yellowstone Power, Inc. to Emerald Forest Products, Inc. This information should suffice to allow the Department to transfer the water rights into the name of Emerald Forest Products, Inc. without further challenge from Boise Cascade.

As to the Department's statement that "Plat of Property Map and deed attached to your Change of Ownership does not support the change of ownership on water rights 65-585 and 65-587," Emerald Forest Products disagrees with that assertion. The place of use for both water right no. 65-585 and 65-587 include all of the property owned by Emerald Forest Products, Inc. As such, the rights are appurtenant to the property and should be transferred. The appurtenance of these rights was verified by John Westra at IDWR's regional office in Boise. Furthermore, as water right no. 65-587 is for an industrial use, it is not subject to the same sort of acreage limitations that a water right for irrigation purposes would be subject to. Emerald Forest Products, Inc. is the only operator of an industrial facility within the entire place of use, and as an

appurtenance, water right no. 65-587 should transfer. Similarly, water right no. 65-585 for domestic use is appurtenant to the property, and also should be transferred.

I am aware that Boise Cascade, LLC, has challenged the transfer of ownership, stating that nothing more than a portion of water right no. 65-586, and all of water right no. 65-7094, however, this is incorrect. In the plain language of the 2004 Special Warranty Deed, on page 1, in addition to the representations concerning water rights 65-586 and 65-7094 at paragraph v, in the next paragraph the deed contains the following language:

This conveyance shall include any and all appurtenances, tenements, hereditaments, reversions, remainders, easements, rights-of-way and water rights in anyway appertaining to the property.

Idaho law has continuously and unambiguously held that where a deed contains plan language conveying appurtenances, that all water rights appertaining to the property shall be transferred. *See Wilterding v. Green*, 4 Idaho 773, 45 P. 134 (1896), *Hall v. Blackmon*, 8 Idaho 272, 68 P. 19 (1902), *Gerber v. Nampa & Meridian Irr. Dist.*, 16 Idaho 22, 100 P. 88 (1909), *Russell v. Irish*, 20 Idaho 194, 118 P. 501 (1911), *Paddock v. Clark*, 22 Idaho 498, 126 P. 1053 (1912), *Bennett v. Twin Falls North Side Land & Water Co.*, 27 Idaho 643, 150 P. 336 (1915), *Koon v. Empey*, 40 Idaho 6, 231 P. 1097 (1924), *Lemmon v. Hardy*, 95 Idaho 778, 519 P.2d 1168 (1974). This Special Warranty Deed at issue in this action goes one step further and expressly declares that the "conveyance shall include any and all...water rights in anyway appertaining to the Property." As water rights 65-585 and 65-587 are clearly appurtenant to the property of Emerald Forest Products, ownership of both water rights should transfer to Emerald Forest Products, Inc.

For these reasons Emerald Forest Products requests that the Department process this Notice of Change of Water Rights Ownership, transferring water right nos. 65-585, 65-586, 65-587 and 65-7094 to Emerald Forest Products, Inc. The processing fee has been previously submitted and has been retained by the Department. Thank you for your assistance.

Very truly yours,

BARKER ROSHOLT & SIMPSON LLP



Shelley M. Davis

Enc.

Cc: Richard Vinson, Emerald Forest Products, Inc.
Kyle Yearsley, Boise Cascade, LLC