



STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
LAWRENCE G. WASDEN

June 1, 2012

Shelley M. Davis
Barker Rosholt & Simpson LLP
PO Box 2139
Boise, ID 83701-2139

Re: Notice of Change in Ownership of Water Right Nos. 65-585, 65-586, 65-587 & 65-7094

Dear Ms. Davis:

On May 30, 2012, the Idaho Department of Water Resources (Department) received a letter from you, on behalf of your client, Emerald Forest Products, concerning a *Notice of Change of Ownership* for water right nos. 65-585, 65-586, 65-587, and 65-7094. Your letter was sent in response to the Department's May 15, 2012 letter, in which the Department asked for additional information concerning ownership of water right nos. 65-585, 65-586, 65, 587, and 65-7094.

Based on the Department's review of the documents provided, the Department will change ownership to your client only as to water right no. 65-7094, plus a portion of water right no. 65-586 sufficient to allow a total combined water right from the well that is the point of diversion for water right no. 65-7094 of 150 gallons per minute (0.33 cfs). The Department will not change ownership of the remaining portion of water right no. 65-586, or water right nos. 65-585 and 65-587.

Unless expressly reserved, water rights in Idaho "pass with the land, even if they are not mentioned in the deed and the deed does not mention 'appurtenances.'" *Bagley v. Thomason*, 149 Idaho 799, 803, 241 P.3d 972, 976 (2010).

The October 25, 2004 *Special Warranty Deed* contains a general appurtenances paragraph that conveys "all . . . water rights in anywise appertaining to the Property." Immediately preceding the general appurtenances paragraph, however, is paragraph (v), which states as follows:

(v) Grantor hereby conveys water right 65-07094 plus a portion of water right 65-00586 sufficient to allow a total combined water right from the well that is the point of diversion for water right 65-07094 of 150 gallons per minute (.33 cubic

feet per second). Grantor further agrees to cooperate in the filing of all documentation necessary to accomplish this conveyance.

"It is well established that specific provisions in a contract control over general provisions where both relate to the same thing. *Morgan v. Firestone Tire and Rubber Co.*, 68 Idaho 506, 518-19, 201 P.2d 976, 983 (1949)." *Twin Lakes Village Property Ass'n, Inc. v. Crowley*, 124 Idaho 132, 138, 857 P.2d 611, 617 (1993).

Paragraph (v) and the general appurtenances paragraph both pertain to water rights; however, paragraph (v) conveys only water right no. 65-7094, plus a portion of water right no. 65-586 sufficient to allow a total combined water right from the well that is the point of diversion for water right no. 65-7094 of 150 gallons per minute (0.33 cfs).

Because of the specific language used in paragraph (v), the Department will not change ownership of the remaining portion of water right 65-586, or water right nos. 65-585 and 65-587.

If your client has additional documents for the Department to consider, please provide the information to the Department at your earliest convenience.

Very Truly Yours,

A handwritten signature in black ink, appearing to read 'C. Bromley', with a stylized flourish at the end.

CHRIS M. BROMLEY
Deputy Attorney General

cc: Kyle Yearsley
Bruce Smith