



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way • Boise, Idaho 83705-5082

Phone: (208) 334-2190 • Fax: (208) 334-2348 • Web Site: www.idwr.idaho.gov

C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

December 21, 2011

Scot D. Hennings
1501 Hayes Lane
Montpelier, ID 83254

RE: Notice of Change in Water Right Ownership for Rights 11-301, 11-302, 11-303, 11-304

In October 2006, you filed a Notice of Change in Water Right Ownership ("ownership change") for the four water rights listed above. At the time you filed your ownership change, all ownership changes in the Bear River basin were being held due to the ambiguities of the 1920 Bear River Decree. Just recently, we have begun to re-evaluate each of the ownership changes in the basin to determine which ones can be completed at this time. Earlier this year, we asked you to provide a chain of deeds tracing ownership from Edgar Lindsay, the owner listed in 1920 Decree, to you. An incomplete chain of deeds was provided in July.

Given the information contained in the deeds, we were able to complete the ownership change for rights 11-302 and 11-303. The deeds are contradictory on what portion of the other two rights, 11-301 and 11-304, are associated with your property. This letter is meant to briefly describe the contradiction. The department cannot update the ownership of rights 11-301 and 11-304 until consistent and clear evidence of ownership is provided.

The 1920 Decree describes water right 11-301 as follows: 1.60 cfs, 5/1/1877, for the irrigation of 80 acres within the E1/2SE, SENE of Section 34 and the W1/2SW, W1/2NW of Section 35. The decree describes water right 11-304 as follows: 0.8 cfs, 5/1/1881, for the irrigation of 40 acres in the SESE of Section 34 and the W1/2SW of Section 35. Water rights 11-302 and 11-303 carry a 5/1/1877 priority date and are for the irrigation of 35 acres in the SENE of Section 34.

The contradiction in the deeds is fairly straightforward. Many of the deeds between 1930 and 1964 state that the E1/2SE and SENE of Section 34 (your property) carry a "full primary water right" for the entire 120 acres of land, consisting of 120 inches of water from Spring Creek, Stauffer Creek, and Nounan Creek with a priority date of May 1, 1877. This statement, by itself, is in error. The 1920 decree authorized Edgar Lindsay to irrigate 115 acres under the 1877 rights. Right 11-301 is good for 80 acres. Rights 11-302 and 11-303, combined, are good for 35 acres. Therefore, it would be impossible to have a full supply of 1887 water for the 120 acres. If these early deeds were used to determine ownership, you would be entitled to all of rights 11-301, 11-302, and 11-303, and none of 11-304.

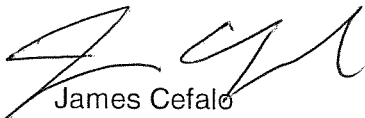
Beginning in 1967, the deeds become disconnected and confusing. There are multiple quitclaim deeds for the property from individuals whose interest in the property is unknown. In other words, the chain of deeds breaks between 1964 and 1967. It is unclear how the property ownership passed during this period. In 1976, Hanley Dawson conveyed the property to Charles Lee and Nina Nelson through a warranty deed. It is unclear how Mr. Dawson came into possession of the property. The Dawson to Nelson conveyance included water rights 11-302 and 11-303 and only included a split portion of 11-301 and 11-304. If the later deeds were used to determine ownership, you would be entitled to all of rights 11-302 and 11-303, and a portion of 11-301 and 11-304.

Because all of the deeds agree that rights 11-302 and 11-303 are still appurtenant to the SENE of Section 34 (your property), we are able to complete the ownership change of those two rights at this time. The rights are now in the name of Scot D. and Lorie Hennings, consistent with the deeds. Updated water right reports for these rights are enclosed. We cannot, however, complete the ownership change on rights 11-301 and 11-304. The department strives to complete ownership changes correctly, avoiding undoing changes and reconfiguring water rights in the future.

Therefore, the filing fees associated with the ownership change of 11-301 and 1-304 will be refunded (\$200). **A refund check from the state of Idaho should arrive in a couple of weeks.** Please feel free to re-file an ownership change for rights 11-301 and 11-304 as additional information and documents become available.

As we discussed in a previous phone conversation, the ownership of the rights may need to be settled by a civil court. Court orders or quiet title actions are the best proof of ownership. We would update the water right ownership to be consistent with any court order. You could also seek a notarized affidavit from all of the property owners under the original water right descriptions, confirming their interest (or non-interest) in the rights. In other areas of the Bear River basin, neighbors are attempting to collectively resolve ownership issues. Please contact me with any questions you may have.

Sincerely,

A handwritten signature in black ink, appearing to read 'J Cefalo', written over the printed name.

James Cefalo
Water Resources Program Manager
(208) 525-7161