

MEMO

TO: File

FROM: James Cefalo JRC

DATE: December 5, 2011

RE: Ownership Change filed by L2 Limited Partnership

In June 2011, L2 Limited Partnership filed an ownership change for 13 ground water rights in the Montevue area (31-11852, 31-11856, 31-11860, 31-11864, 31-11868, 31-11872, 31-11876, 31-11880, 31-11884, 31-11888, 31-2258F, 31-7257, and 31-10378) Included with the ownership change was a warranty deed from David Sanders to L2 Limited Partnership. The warranty deed specifically included all of the water rights.

An initial review of the ownership change showed that the ownership for water rights 31-2258F, 31-7257, and 31-10378 could be updated without a split. These three rights are located entirely within the property described in the deed. The remaining ten water rights presented a problem. The ten rights are fully overlapping and describe a 320-acre place of use (8 quarter-quarters). A review of the water rights showed that there were two small parcels within the water right place of use not covered by the Sanders to L2 warranty deed. The two parcels are located in the SESENE of Section 14, T07N, R33E. Combined they cover a parcel that is 185 feet by 360 feet (1.5 acres). Jefferson County taxlot data indicates that the parcel is owned by Daniel Babcock. The water rights cover all 40 acres of the SENE of Section 14.

Lavar Newman, partner of L2 Limited Partnership, was notified of the 1.5-acre discrepancy. He was advised that the ten water rights would likely need to be split, with 1.5 acres going to the Babcock property. Mr. Newman opposed splitting the rights and stated that he believed he was entitled to the full amount under the water rights. He asked us to review the water right files to verify ownership.

I conducted some additional investigation on the history of the water rights. The original ten water rights (listed under different numbers) used to be owned by the Montevue Canal Company. Dean Sanders (David Sanders father) owned 320 shares within the canal company. In 2004, the canal company decided to sell a portion of its water rights to three of its shareholders, including Dean Sanders. Transfer No. 70809 was filed to consolidate ten of the canal company's rights onto the 800 acres owned by three shareholders. The canal company then conveyed ownership to the individual shareholders in the company. Dean Sanders received a 320/800 portion of the right because he owned 320 shares in the canal company.

In January 2005, an Ownership change was filed on the ten water rights splitting ownership between the three shareholders (Maughan, L3 Limited Partnership, and Dean Sanders). After the conveyance, the three shareholders cancelled their shares in the Montevue Canal Company and moved forward with their own private rights.

The Dean Sanders water rights were conveyed to David Sanders through a March 2008 warranty deed. The Sanders to Sanders deed contained the same exclusion for the 1.5-acre Babcock property. I believe the critical question for determining ownership of the 1.5-acre portion of the water right is whether Dean Sanders owned the 1.5 acre parcel at the time the canal company rights were conveyed into his name (in January 2005). Prior to January 2005, all ten of the original water rights were held by Montevue Canal Company. The only way water could be bought or sold would be through conveyance of shares in the canal company.

Research revealed that the 1.5-acre parcel was purchased by Babcock in 2002, well before the canal company conveyed the water rights to Dean Sanders. (Jefferson County Instrument No. 316354, Deed from Hartwell to Babcock) Therefore, Daniel Babcock and his successors in interest would have no claim to the water rights that passed from Dean Sanders to David Sanders to L2 Limited Partnership. The ownership of the ten rights listed above can be updated, without a split, based on the deed provided by Mr. Newman. He should be advised to file a transfer to move the 1.5-acres, currently appurtenant to the Babcock property, to his own property.

3060213148

316354
WARRANTY DEED

ALLIANCE TITLE & ESCROW CORP

Order No.: 3060213148

FOR VALUE RECEIVED

Instrument # 316354
RIGBY, JEFFERSON, IDAHO
2002-08-07 01:04:00 No. of Pages: 1
Recorded for: ALLIANCE TITLE & ESCROW
CONNIE M. KELLER Fee: 3.00
Ex-Officio Recorder Deputy
Index to WARRANTY DEED

Bert J. Hartwell, an unmarried person and Sharon Hartwell, an unmarried person, who acquired title as Bert J. Hartwell and Sharon Hartwell, Husband and Wife

the grantor(s), do(es) hereby grant, bargain, sell and convey unto

Daniel Babcock and Dana Lee Babcock, Husband and Wife

whose current address is 1005 E. 1500N.
TERRACON, ID. 83450

the grantee(s), the following described premises, in Jefferson County, Idaho, TO WIT:

Beginning at a point that is 384 feet North and 26 feet West of the East Quarter Corner of Section 14, Township 7 North, Range 33 East of the Boise Meridian; thence North 165 feet; thence West 165 feet; thence South 165 feet; thence East 165 feet to the point of beginning, Jefferson County, Idaho, according to the recorded plat thereof.

ALSO: Beginning at a point 384 feet North and 26 feet West of the East Quarter Corner of Section 14, Township 7 North, Range 33 East of the Boise Meridian, and running thence South 185 feet; thence West 185 feet; thence North 350 feet; thence East 20 feet; thence South 165 feet; thence East 165 feet to the point of beginning, Jefferson County, Idaho.

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee, heirs and assigns forever. And the said Grantor does hereby covenant to and with the said Grantee(s), that (s)he is/are the owner(s) in fee simple of said premises; that they are free from all encumbrances Except: Current Year Taxes, conditions, covenants, restrictions, reservations, easements, rights and rights of way, apparent or of record.

And that (s)he will warrant and defend the same from all lawful claims whatsoever.

Dated: 8/01/2002

Bert J. Hartwell
Bert J. Hartwell

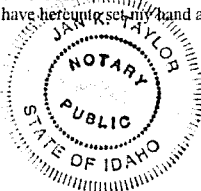
Sharon Hartwell
Sharon Hartwell

State of Idaho }
County of Jefferson } ss.

RECEIVED BY
ASSESSOR
For PLATTING
Date 8-7-02 Time 1:04

On this 1 August, 2002, before me, a Notary Public in and for said state, personally appeared Bert J. Hartwell and Sharon Hartwell

known or identified to me to be the person(s) whose name(s) subscribed to the within instrument, and acknowledged to me that he/she/they executed the same,
IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal the day and year first above written.



C. R. Taylor
Notary Public for the State of Idaho
Residing at: Rexburg
Commission Expires: 4/21/03