



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

C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

October 13, 2011

WHISKEY CREEK RANCH LLC
427 RICE HOPE DR
MT PLEASANT, SC 29464

RE: Transfer No. 77048 and Application for Permit 13-7783

Dear Applicant(s):

The Department of Water Resources has received your water right transfer application and application for permit. Please refer to the transfer number and application for permit number referenced above in all future correspondence regarding this transfer and application.

A legal notice of the applications has been prepared and is scheduled for publication in the CARIBOU COUNTY SUN on 10/20/2011 and 10/27/2011. Protests to these applications may be submitted for a period ending ten (10) days after the second publication.

If the applications are protested, you will be sent a copy of each protest. All protests must be resolved before the applications can be considered for approval. If the protest(s) cannot be resolved voluntarily, the Department will conduct a conference and/or hearing on the matter.

If the applications are not protested, the Department will process your applications and notify you of any action taken on the application. If your applications are approved, the Department will send you a copy of the approval document.

Please contact this office if you have any questions regarding the application.

Sincerely,

Sharla Cox
Administrative Assistant

cc: RACINE OLSON NYE COOPER & BUDGE
RANDALL C BUDGE
PO BOX 1391
POCATELLO, ID 83205



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GARY SPACKMAN
Interim Director

October 13, 2011

LYNN RASMUSSEN
WATER DISTRICT 13Q
168 LAGO-LIBERTY RD
GRACE, ID 83241

RE: Application for Transfer 77048
Water Right Number(s) 13-699A, 13-687A, 13-700, 13-701, 13-697A,
13-698, 13-728, 13-729, 13-761, 13-4004, 13-688

Dear Watermaster:

A copy of the above referenced application is enclosed. Please review the application, then complete the enclosed recommendation form and return it to this office within 21 days of the date of this letter.

IDWR's regional offices can finish reviewing an unprotested application as soon as the protest period has past. Your prompt response to this request will ensure that your recommendation can be considered during regional review. If IDWR has not received your written recommendation within 21 days from the date of this letter, IDWR will presume that you do not oppose approval of the application and that you have no comments for IDWR to consider.

Please contact this office if you have any questions regarding the application.

Sincerely,

Blake Jordan
Sr. Water Resources Agent

Enclosure(s)

BJ:sc



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October 13, 2011

C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

LYNN RASMUSSEN
Water District 13Q
168 LAGO-LIBERTY RD
GRACE, ID 83241-5352

RE: Application for Permit No 13-7783

Dear Watermaster:

A copy of the above referenced application is enclosed. Please review the application, then complete the enclosed recommendation form and return it to this office within 21 days of the date of this letter.

IDWR's regional offices can finish reviewing an unprotested application as soon as the protest period has past. Your prompt response to this request will ensure that your recommendation can be considered during regional review. If IDWR has not received your written recommendation within 21 days from the date of this letter, IDWR will presume that you do not oppose approval of the application and that you have no comments for IDWR to consider.

Please contact this office if you have any questions regarding the application.

Sincerely,

Blake Jordan
Sr. Water Resources Agent

Enclosure(s)

BJ:sc



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GARY SPACKMAN
Interim Director

October 13, 2011

MICHAEL TINGEY
WATER DISTRICT 13S
2114 LAGO LIBERTY ROAD
GRACE, ID 83241

RE: Application for Transfer 77048
Water Right Number(s) 13-699A, 13-687A, 13-700, 13-701, 13-697A,
13-698, 13-728, 13-729, 13-761, 13-4004, 13-688

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Please contact this office if you have any questions regarding the application.

Sincerely,

Blake Jordan
Sr. Water Resources Agent

Enclosure(s)

BJ:sc



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October 13, 2011

MICHAEL TINGEY
WATER DISTRICT 13S
2114 LAGO LIBERTY ROAD
GRACE, ID 83241

RE: Application for Transfer 77048
Water Right Number(s) 13-699A, 13-687A, 13-700, 13-701, 13-697A,
13-698, 13-728, 13-729, 13-761, 13-4004, 13-688

Dear Watermaster:

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IDWR's regional offices can finish reviewing an unprotested application as soon as the protest period has past. Your prompt response to this request will ensure that your recommendation can be considered during regional review. If IDWR has not received your written recommendation within 21 days from the date of this letter, IDWR will presume that you do not oppose approval of the application and that you have no comments for IDWR to consider.

Please contact this office if you have any questions regarding the application.

Sincerely,

Blake Jordan
Sr. Water Resources Agent

Enclosure(s)

BJ:sc

Cox, Sharla

From: Cox, Sharla
Sent: Thursday, October 13, 2011 11:07 AM
To: 'Caribou County Sun (ccsun10@aol.com)'
Subject: Legal Notice for your paper
Attachments: LegalNotice 474.rtf

Contacts: Caribou County Sun

Sharla

Sharla Cox
Administrative Assistant
Idaho Department of Water Resources
900 N. Skyline Dr. Ste. A
Idaho Falls ID 83402
208-525-7161 - telephone
208-525-7177 - fax
sharla.cox@idwr.idaho.gov

The following application(s) have been filed to appropriate the public waters of the State of Idaho:

13-7783

WHISKEY CREEK RANCH LLC
427 RICE HOPE DR
MT PLEASANT, SC 29464
Point of Diversion SWSE
S7 T11S R41E
CARIBOU County
Source WHISKEY CREEK Tributary BEAR RIVER
Use: AESTHETIC STORAGE
10/01 to 04/19 12.1 AF
Use: DIVERSION TO STORAGE
10/01 to 04/19 0.2 CFS
Use: WILDLIFE STORAGE
10/01 to 04/19 12.1 AF
Total Diversion: 0.2 CFS 12.1 AF
Date Filed: 2/3/2011
Place Of Use: AESTHETIC
STORAGE
T11S R41E S18
L2(SWNW)
Place Of Use: WILDLIFE
STORAGE
T11S R41E S18
L2(SWNW)

Permits will be subject to all prior water rights. For additional information concerning the property location, contact Eastern Region office at (208) 525-7161. Protests may be submitted based on the criteria of Idaho Code § 42-203A. Any protest against the approval of this application must be filed with the Director, Dept. of Water Resources, Eastern Region, 900 N Skyline Dr Ste A, Idaho Falls ID 83402 together with a protest fee of \$25.00 for each application on or before November 17, 2011. The protestant must also send a copy of the protest to the applicant.

NOTICE OF PROPOSED CHANGE OF WATER RIGHT
TRANSFER NO. 77048

WHISKEY CREEK RANCH LLC, 427 RICE HOPE DR, MT PLEASANT, SC 29464 has filed Application No. 77048 for changes to the following water rights within CARIBOU County(s): Right No(s). 13-687A, 13-688, 13-697A, 13-698, 13-699A, 13-700, 13-701, 13-728, 13-729, 13-761, 13-4004; to see a full description of these rights and the proposed transfer, please see www.idwr.idaho.gov/apps/ExtSearch/WRFiling.asp. The purpose of the transfer is to change a portion of the above rights as follows:

The applicant proposes to change the point of diversion, to change the place of use, to change the nature of use and to change the period of use. The points of diversion are in the SWSE Sec 7 T11S R41E (Whiskey Creek) and SESE Sec 18 T11S R41E (Trout Creek, North Fork) for 6.97 cfs. The place of use is within Sec 18 and 19 T11S R41E for 348 acres within a 536 acre permissible place of use. The nature of use and period of use for irrigation is (4/20 to 9/30 and 5/1 to 10/1), diversion to storage (4/20 to 9/30), aesthetic storage and wildlife storage (10/1 to 4/19).

For additional information concerning the property location, contact Eastern Region office at (208) 525-7161. Protests may be submitted based on the criteria of Idaho Code Sec. 42-222.

Any protest against the proposed change must be filed with the Department of Water Resources, Eastern Region, 900 N Skyline Dr Ste A, Idaho Falls ID 83402 together with a protest fee of \$25.00 for each application on or before November 17, 2011. The protestant must also send a copy of the protest to the applicant.

GARY SPACKMAN, Interim Director

Published on October 20 and 27, 2011

RECEIVED

JUN 03 2011

Department of Water Resources
Eastern Region

LAW OFFICES OF

**RACINE OLSON NYE BUDGE & BAILEY
CHARTERED**

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W. MARCUS W. NYE
RANDALL C. BUDGE
JOHN A. BAILEY, JR.
JOHN R. GOODELL
JOHN B. INGELSTROM
DANIEL C. GREEN
BRENT O. ROCHE
KIRK B. HADLEY
FRED J. LEWIS
ERIC L. OLSEN
CONRAD J. AIKEN
RICHARD A. HEARN, M.D.
LANE V. ERICKSON
FREDERICK J. HAHN, III
DAVID E. ALEXANDER
PATRICK N. GEORGE
SCOTT J. SMITH
JOSHUA D. JOHNSON
STEPHEN J. MUHONEN
CANDICE M. MCHUGH
CAROL TIPPI VOLYN
BRENT L. WHITING
JONATHAN S. BYINGTON
DAVE BAGLEY
THOMAS J. BUDGE
JONATHAN M. VOLYN
MARK A. SHAFFER
JASON E. FLAIG
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COEUR D'ALENE OFFICE
250 NORTHWEST
BOULEVARD, SUITE 106A
COEUR D'ALENE, ID 83814
TELEPHONE: (208) 765-6888

ALL OFFICES TOLL FREE
(877) 232-6101

LOUIS F. RACINE (1917-2005)
WILLIAM D. OLSON, OF COUNSEL

June 2, 2011

Blake Jordan
IDWR – Eastern Region
900 N. Skyline Drive, Suite A
Idaho Falls, ID 83402

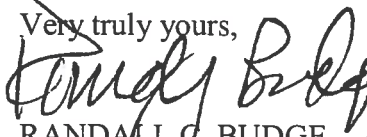
**Re: Whiskey Creek Ranch Amended Application for Transfer
IDWR Administrative Basin 13**

Dear Mr. Jordan:

Please find enclosed an Amended Application for Transfer. The legal description for the place of use after the transfer has been completed has been amended along with the narratives. You will also find at the end of the packet a map of the place of use and acres to be irrigated after the transfer is completed.

If you have any further questions, please call Candice McHugh at my office.

Very truly yours,


RANDALL C. BUDGE

Enclosures



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C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

February 10, 2011

Randy Budge
Racine Olson Nye Budge & Bailey
201 East Center Street
Pocatello, ID 83204

Re: Whiskey Creek Ranch – Transfer No. 77048

Dear Mr. Budge:

We have started reviewing the transfer application you submitted on behalf of Whiskey Creek Ranch, LLC and have come across a few items that need to be addressed. We may come across other items in the future, but I think it's best to make you aware of what we have found so far so you can start collecting the additional information.

The first item is really a housekeeping matter. The transfer application was filed in the name of Whiskey Creek Ranch, LLC. However, the last deed in the chain of ownership is in the name of Nathan S Hale and Stacy N Hale (2006). Our Caribou County GIS taxlot layer shows that part of the NENE of Section 19 is in the name of Whiskey Creek Ranch. A map provided with the application shows that water right 13-761 has been used to irrigate this specific property. If the applicant wishes to change the name of all of the water rights to Whiskey Creek Ranch LLC, he needs to provide a warranty deed conveying the water rights (and/or property) from Nathan and Stacy Hale to Whiskey Creek Ranch. Otherwise, the transfer approval will update ownership according to the current evidence of ownership. If no changes are made, 13-761 will probably end up in the name of Whiskey Creek Ranch and the remaining rights would be in the name of Nathan and Stacy Hale. If you decide to execute additional deeds conveying water or property, please provide us a copy of the documents.

Second, the decree for water rights 13-687A, 13-688, 13-728, 13-729 and 13-761 includes the NESE of Section 18, T11S, R41E. Taxlot records show that Steven Harrison owns a 2-acre parcel in that quarter-quarter. The decrees for water rights 13-728, 13-729 and 13-761 include the SESE of Section 18. Taxlot records show that Ralph Olorenshaw owns a 2-acre parcel in that quarter-quarter. In addition, Daniel Mickelson still owns about 12 acres in both of

77048

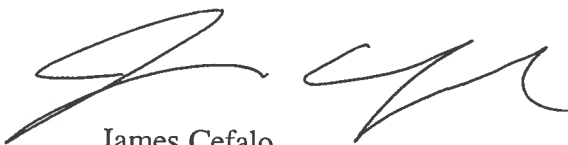
these quarter-quarters. It is unlikely that Mr. Mickelson will claim any portion of the water rights transferred because he was willing to sign affidavits supporting elements of the transfer. The other two owners, Harrison and Olorenshaw, may not be aware of the transfer and may be entitled to a small portion of the listed water rights. We will send a letter to all of these individuals notifying them of the transfer and of their right to protest. If no protests are received, we will move forward assuming that Whiskey Creek Ranch has full ownership of the rights. You don't need to take any steps on this issue. I just wanted to make you aware that letters will be sent to Olorenshaw and Harrison.

Third, the application states that a portion of the property has been under a set-aside program. Please provide a copy of the CRP contract and a map showing where the dried-up acres are located.

Finally, could you please provide a map showing where the 348 acres will be irrigated after the transfer process is complete. If we approve the permissible place of use, the water user must identify the location of the acres being irrigated within the PPU. As the irrigated acres are adjusted in the future, the water user will need to update the department's shapefile of irrigated acres.

Thank you for addressing these items. We will continue to update you on the status of the application and notify you if there is any more information needed.

Sincerely,

A handwritten signature in black ink, appearing to read 'James Cefalo', with a stylized, cursive script.

James Cefalo
Water Resources Program Manager
IDWR – Eastern Region

Cc: Whiskey Creek Ranch, LLC

RECEIVED

JAN 21 2011

Department of Water Resources
Eastern Region

LAW OFFICES OF

**RACINE OLSON NYE BUDGE & BAILEY
CHARTERED**

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LOUIS F. RACINE (1917-2005)
WILLIAM D. OLSON, OF COUNSEL

January 19, 2011

James Cefalo, Manager
Water Resource Program
IDWR – Eastern Region
900 N. Skyline Drive, Suite A
Idaho Falls, ID 83402

**Re: Whiskey Creek Ranch Application for Transfer
IDWR Administrative Basin 13**

Dear Mr. Cefalo:

This letter and enclosed application are in response to your June 11, 2010, letter to me regarding the Whiskey Creek Ranch Application for Transfer.

Please find the following documents enclosed:

Reference Number	Document Description
	Checklist submitted with Application for Transfer
	Application for Transfer of Water Right Parts 1, 2, 3 (consisting of 5 pages)
	Attachments to Transfer Application
	Check for fee
1.A.2	Purpose of Transfer Narrative
1.B.1	Description of Rights After Requested Changes
1.B.5.e	Description of Other Water Rights
2A	Water Right Ownership Documentation (deeds consisting of 22 pages)
	Water Right Reports/Decrees/Shares Certificate (consisting of 22 pages)
2B	Split Rights analysis with narrative and maps (consisting of 5 pages)
4	Special Power of Attorney
7A-1	USGA Quad Map showing points of diversion
7A-2	2009 NAIP Image Map
7B	2009 NAIP Image Map showing location and extent of existing acres

- 8B Narrative Re Change in Nature of Use
- 9A-1 Water Master Delivery Records
- 9B-1 Affidavit of Daniel Mickelson dated Oct. 12, 2010 with attachment
- 9B-2 Second Affidavit of Daniel Mickelson dated Jan. 5, 2011
- 9B-3 Affidavit of Kent Clegg dated Oct. 20, 2010

Current Acres Irrigated

The first piece of information that you needed included in the transfer application was to identify the acres currently being irrigated under each water right. This information is reflected in Transfer Part 3A, Attachment 7B.

Last Chance Canal Company Shares

The second piece of information that you needed was a description of how shares from Last Chance Canal Company are physically delivered to Whiskey Creek Ranch and to identify where within the property the Last Chance Canal Company shares are currently being used. This information is contained in Transfer 1.B.5.e.

Water Right Nos. 13-687, 13-688, 13-699, 13-700, 13-701, 13-697 and 13-698

You also requested that the location of use for Water Right Nos. 13-699A, 13-700, and 13-701 be further explained. This information is also contained in Transfer 1.B.5.e. and also in the maps and Transfer Part 2B and the explanation attached thereto explain the split analysis for these three water rights.

You requested that we provide information showing that the surface water rights being transferred have in fact been recently delivered by the Watermaster. Enclosed you will find Watermaster records from Water District 13S from 1994 – 2009 that show delivery of water right nos. 13-687, 13-688, 13-699, 13-700, 13-701, 13-697 and 13-698 (Attachment 9A).

Water Right Nos. 13-728, 13-729 and 13-4004

Water right nos. 13-728, 13-729 and 13-4004 are diverted from the North Fork of Trout Creek which is Water District 13P. There are three affidavits included with this letter that explain the history and use of these water rights. Mr. Daniel Mickelson executed two affidavits (the Affidavit of Daniel Mickelson dated October 12, 2010 (Attachment 9B-1), and the Second Affidavit of Daniel Mickelson dated January 5, 2011 (Attachment 9B-2)) and Mr. Kent Clegg executed one affidavit dated October 20, 2010 (Attachment 9B-3).

As the Affidavit of Daniel Mickelson (Attachment 9B-1), the prior owner of the property explains, there is no active water district on the north fork of Trout Creek as such there are no Water Master records of recent delivery. Also included in the Affidavit of Daniel Mickelson (Attachment 9B-1) is evidence of the historical use and priority date for statutory claim no. 13-4004. He filed the statutory claim, he owned and worked the land for forty-three years, used the

water right as claimed and he personally observed water being diverted and used from North Fork of Trout Creek since he sold the property in 2006.

In the Second Affidavit of Daniel Mickelson (Attachment 9B-2), he states that he is familiar with the use and delivery of water right numbers 13-728 and 13-729 and that he used and diverted them for the years prior to the sale of the property to Mr. Hale in 2006.

Attested to in the Affidavit of Mr. Kent Clegg (Attachment 9B-3), who currently operates the ranch, water right nos. 13-729, 13-729 and 13-4004 have been continuously used during the past five irrigation seasons starting in 2006.

Water Right No. 13-761

Water right no. 13-761 is diverted from the Middle Fork of Trout Creek which is Water District 13Q. However, the Watermaster report does not show any delivery of that water right. As attested to in the Second Affidavit of Daniel Mickelson (Attachment 9B-2), this water right is a flood water right and is not used every year but only when water is available.

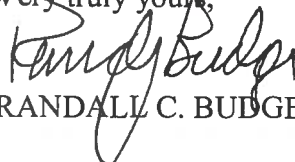
Chain of Title

An additional piece of information that you requested was a chain of title necessary to verify the owners between the owners listed on the Dietrich Decree (Oleranshaw, Hyrum Swenson and James Swenson) to Mr. Hale. Attached hereto is a copy of the deeds relating to the property. (Attachment 2A). None of the deeds reserved portions of the water rights or show that any of the water rights in question are no longer appurtenant to the property.

I have also included a special Power of Attorney (Attachment 4) providing authority for me and my firm to act on the applicant's behalf. Finally, I have enclosed the fee of \$530.00

I believe this Application for Transfer should be complete and adequately addresses all the information requested in your June 11, 2010, letter. If you need any further information or explanation, please don't hesitate to contact me or Candice McHugh at (208) 395-0011. Thank you for your time and attention to this matter.

Very truly yours,


RANDALL C. BUDGE

Enclosures



State of Idaho

DEPARTMENT OF WATER RESOURCES

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Governor

GARY SPACKMAN
Interim Director

June 11, 2010

Randy Budge
Racine Olson Nye Budge & Bailey
201 East Center Street
Pocatello, ID 83204

Re: Whiskey Creek Ranch Applications

Dear Mr. Budge,

On April 12, 2010, our office received an Application for Permit and Application for Transfer in the name of Whiskey Creek Ranch, LLC. The applications identified your firm as the designated representative. After an initial review of the applications, Blake Jordan, a field agent in our office, determined that essential information was missing from the transfer application and chose to return both applications. Mr. Jordan's letter unfortunately did not identify the missing information. IDWR's transfer processing memo states that an application that does not meet minimum requirements should be returned to the applicant along with a letter identifying the deficiencies. Mr. Jordan's letter did not do this. Shortly after Mr. Jordan's letter was sent, you and I had a phone conversation to discuss the applications. We agreed in our conversation that the department will continue to process the applications, provided the deficiencies identified below are resolved. This letter is meant to set forth the information missing from the applications.

First, for each water right included in the transfer application, you need to specifically identify the acres currently being irrigated under each water right. Transfer Processing Memo No. 24 requires an applicant proposing to change a place of use to provide maps or electronic shapefiles providing "a clear delineation of the location and extent of the irrigated acres prior to the proposed transfer, and must also provide a clear delineation of the location and extent of the irrigated acres, if any, after the transfer."

The 1920 Dietrich decree did not describe the specific acres associated with the decreed rights. Rather, it generally set forth the total acres located in each QQ. In our phone conversation, you mentioned how difficult it is to document how the irrigated acres may have

been shifted and adjusted over time. We recognize that it may be difficult, if not impossible, to document the irrigation history of each water right from 1920 to the present day. However, we are not requesting that information. We need to know specifically where each of the water rights is currently being put to use. For example, water right 13-688 carries a decreed 34-acre place of use. We need you to identify, by submitting a map or an electronic shapefile, the exact 34 acres that are being irrigated under that water right in 2010. This request is not unreasonable. The water rights listed in the transfer application are separate, individual water rights with specific acreage limits. Current or previous owners receiving the benefit of those water rights must know where the water is actually being delivered. This may require some additional investigation by a consulting firm, such as SPF Water Consultants. However, the information sought should be easily obtained from the current or former water right holders.

Second, the application states that certain shares from the Last Chance Canal Company will be used on the permissible place of use. According to the application, the Last Chance shares are delivered through Whiskey Creek. However, department water right records show that the Last Chance Canal water rights are all diverted from the Bear River. We request that the applicant explain how Last Chance shares are physically delivered to the Whiskey Creek Ranch and identify where within the property the Last Chance shares are currently being used.

Third, some of the water rights from the Dietrich decree are described in such a way that it is unclear whether any part of the water right is truly appurtenant to Whiskey Creek Ranch. For example, as noted in the application, water rights 13-699A, 13-700, and 13-701 identify 170 irrigated acres within a 260 acre geographic area. Whiskey Creek Ranch now owns approximately 80 acres within the 260 acre area described in the Dietrich decree. The transfer application proposes splitting the three water rights in proportion Whiskey Creek Ranch's current share of the 260 acre area (approximately 31%). However, it is entirely possible that the 170 irrigated acres actually fall outside of Whiskey Creek Ranch's property. The department cannot split an ambiguously defined water right without adequate documentation that 31% of the irrigated acres associated with the water rights are actually located within the Whiskey Creek Ranch property. Much of the ambiguity of ownership can be resolved by a true delineation of how and where the water rights are currently being delivered.

Fourth, we ask that you provide documents showing that the surface water rights being transferred have in fact been recently delivered by the watermaster.

Fifth, we need additional documentation relating to the ownership change portion of the transfer. In order to complete the change of ownership, we need a chain of deeds tracing back to the owner currently listed on the water right. The chain of deeds is necessary to verify that none of the owners between the listed owner and Whiskey Creek Ranch reserved or held back any portion of the water rights.

Finally, if water right 13-4004, a statutory claim, is included in the application for transfer, department staff must conduct a review of the elements of that water right before proceeding with the transfer. Transfer Processing Memo No. 24 states "Applications for transfer proposing to change a water right based on a statutory or beneficial use claim must be reviewed to determine the validity, priority date, and extent of beneficial use established under the claimed right." This review will likely require a field exam and, due to limited staff, could significantly extend the time required to process the transfer. Initially, we are requesting any information regarding the priority date and historical use of water right 13-4004.

One other issue has arisen with your applications. The application checks were also returned with the application and were included in the envelope sent to your office. You mentioned that you never received the envelope. If you still have not received that envelope, it is likely lost in the mail. You need to take the necessary steps to void the checks and issue new checks to cover the application fees. You can include the new checks when you send the additional information. I'm sorry for the inconvenience.

I hope this letter more clearly identifies the information needed to process Whiskey Creek Ranch's applications. As stated in our phone conversation, the department strives to work with water users to make changes to their water rights that promote efficiency and clarity. It is particularly critical in the Bear River drainage that water users maintain an accurate record of their irrigation practices. We will continue to work with you and your clients to collect and develop sufficient information to process your applications. Because additional investigation by consultants may be required on some of the items listed above, I am not setting a 30-day response period at this time. Feel free to contact me directly if you have any questions.

Sincerely,



James Cefalo
Water Resources Program Manager
IDWR – Eastern Region

Cc: Whiskey Creek Ranch, LLC