



State of Idaho

DEPARTMENT OF WATER RESOURCES

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C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

October 17, 2011

Randy Budge
Racine Olson Nye Budge & Bailey
201 East Center Street
PO Box 1391
Pocatello, ID 83204-1391

SUPPORT DATA

IN FILE # 11-376B

RE: Notice of Change in Water Right Ownership for Bear River Meadows

Dear Mr. Budge:

In April 2010, you filed a Notice of Change in Water Right Ownership ("ownership change") on behalf of Bear River Meadows LLC ("BRM") for water rights from Bailey Creek and the Bear River. Because water rights in the Bear River basin are often poorly defined and complex, it has been the department's policy in the past to simply hold all ownership changes in the basin. I feel it does not make sense to hold ownership changes and filing fees indefinitely, particularly when there is little prospect of eliminating the uncertainties in the basin in the near future. Therefore, I have recently started working through the ownership changes in the Bear River basin to determine if any can be completed. Those that lack sufficient evidence of ownership are being returned. This letter is meant to notify you that the BRM ownership change (11-376B, 11-376C, 11-376, 11-377, 11-378, 11-379, 11-380, 11-2000, 11-7512, and 13-954) is being returned. The problems with the ownership change for each of the water rights are described in detail below.

11-376B

Water right 11-376B was created as a result of Transfer 3076. The original water right (11-376, in the name of Edmond Beus) was for 1.80 cfs and 90 acres. Transfer 3076 split water right 11-376 into an "A" and "B" portion. 11-376B (in the name of Joe S. Olorenshaw) was for 0.10 cfs and 4.8 acres. The map included with the transfer shows the 4.8-acre place of use was located near the SW corner of the SWSE of Section 29. Please refer to the enclosed map. This area falls within Exception C, and is not part of the BRM property. Unless it can be shown that water right 11-376B is appurtenant to the BRM property, we cannot complete an ownership change for 11-376B.

11-376C

Water right 11-376C was created as a result of Transfer 3724. 11-376A was split into two pieces, 11-376C and 11-376D. The transfer application sought to move a 2-acre portion of 11-376A to the north to cover an orchard in the NENW of Section 5. This 2-acre piece was assigned number 11-376D. The remaining portion of the water right was assigned number 11-

376C. Water right 11-376C is for 1.66 cfs and 81.2 acres. The place of use is described as the SESW and SWSE of Section 29 and the NWNE of Section 32 (in total, 120 acres). It is unclear where the 81.2 acres is located within the 120-acre place of use description. In any event, BRM would not be entitled to the full 81.2 acres. After removing Exceptions C and D, BRM only owns approximately 63 acres in the three QQs described. Unless it can be shown the exact portion of water right 11-376C that is appurtenant to the BRM property, we cannot complete an ownership change for 11-376C.

11-376

As described above, water right number 11-376 is no longer a valid water right. It has been split into three portions (11-376B, 11-376C, and 11-376D).

11-377 thru 11-380

All four of these water rights are associated with a common place of use. The 1920 Bear River Decree states that all of these rights were owned by Eph Williams and water was delivered through the Rose Ditch. The combined rights are for 4.8 cfs and 240 acres, located within a 420-acre place of use description. Exception E, identified on the map, falls within the 420-acre place of use. It is unclear whether a portion of these rights are appurtenant to the Exception E parcel. BRM owns all of the rest of the 420-acre place of use description for these rights. Unless it can be shown that the entire water right is appurtenant to the BRM property, or, in the alternative, what portion of the rights are appurtenant to the BRM property, we cannot complete an ownership change for 11-377, 11-378, 11-379, or 11-380.

11-2000

According to our water rights database 11-2000 is located entirely within Exception A. Therefore, the BRM warranty deed provided with the ownership change does not support updating the ownership for 11-2000.

11-7512

This is a statutory claim for Ledger Creek, currently in the name of NuWest Industries. The right is for the irrigation of 267 acres located in Section 20 and the NWNE of Section 29. None of the place of use for 11-7512 is covered by the BRM warranty deed. We cannot complete an ownership change on 11-7512 without documentation that BRM owns the property associated with the right.

11-954

This water right was included in the 1920 decree (original right number 11-257). The decree describes 120 irrigated acres located in Sections 33 and 34 (1280 acres). It is unclear whether any of 11-954 is appurtenant to the BRM property. The place of use description for this right is so broad that the entire right may be located outside of the BRM property. Unless it can be shown what portion of the right is appurtenant to the BRM property, we cannot complete an ownership change for 11-954.

I hope this letter helps explain the reasons we cannot process the BRM ownership change as filed. If you feel that my property designation or analysis is incorrect, please let me know. For some of the rights, it may be possible for you to locate and provide evidence of historical use (tracing back to 1920), which would indicate what portions of the rights are associated with the BRM property. I recognize, however, that this type of information is difficult to find. The parcel exceptions listed in the BRM warranty deed present a challenge, because they create an "unknown" for many of the rights. If BRM were to purchase additional parcels in the area, some of these unknowns may be eliminated. You may re-file the ownership change in the future as circumstances change or as additional evidence becomes available. **We have requested a full refund of your filing fee (\$250).** A check from the state of Idaho should arrive within a couple of weeks. Feel free to contact me if you would like to discuss any of these water rights in greater detail.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Cefalo', written over a horizontal line.

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

Encl: Map

Cc: Bear River Meadows, LLC
2920 West Directors Row
Salt Lake City, UT 84104