



State of Idaho

DEPARTMENT OF WATER RESOURCES

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C. L. "BUTCH" OTTER
Governor

DAVID R. TUTHILL, JR.
Director

April 2, 2009

Oak Valley Land Company, LLC
468 S 800 W
Burley, ID 83318

Ricardo & Bertha Mendoza
434 S 326 W
Burley, ID 83318

Dear Interested Parties:

Our office is attempting to process a couple of Notices of Change in Water Right Ownership that you have submitted to the Department. The nature of the two notices is further described below...

In March of 2005, a Notice of Change in Water Right Ownership was submitted to the Department's state office in Boise, on behalf of Ricardo and Bertha Mendoza. This particular notice was filed relating to the Mendoza's purchase of approximately 3.4 acres of land located within the SENE of Section 15, Township 11 South, Range 22 East from Marvin and Lovel Blacker on March 1st, 2005. The Notice of Change in Water Right Ownership identifies a portion of water right 45-7672 as the right proposed to be changed. Along with the notice a \$100.00 filing fee was submitted (based on split of water right 45-7672).

In October of 2008, a Notice of Change in Water Right Ownership was submitted to the Department's southern region office in Twin Falls, on behalf of Oak Valley Land Company, LLC. This particular notice was filed relating to Oak Valley Land Company's purchase of land located within portions of Sections 15 and 16, Township 11 South, Range 22 East from Marvin and Lovel Blacker on October 6th, 2008. The Notice of Change in Water Right Ownership identifies a portion of water right 45-2482C (subsequently renumbered to water right 45-14142) and all of water rights 45-7141, 45-7339B, and 45-7672 as the rights proposed to be changed. Along with the notice a \$175.00 filing fee was submitted (based on split of water right 45-2482C and changes to the entire portions of water rights 45-7141, 45-7339B, and 45-7672).

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Complicating the processing of these two notices is the fact that a water right transfer application was submitted by Marvin and Lovel Blacker in May of 2008 that proposed modifying water right(s) appurtenant to the lands described above purchased by Ricardo and Bertha Mendoza and Oak Valley Land Company, LLC. The Department approved this particular transfer application on October 28th, 2008. This transfer application modified the right, 45-7672, that was appurtenant to the 3.4 acres of Mendoza property by adding an additional authorized point of diversion (well) and also indentifying additional lands as potential places of use. The transfer application also moved portions of three other water rights, 45-7141, 45-7339B, and 45-14142 to the property owned by Ricardo and Bertha Mendoza.

Another complication is that the water right, 45-7672, identified on the Mendoza Notice of Change in Water Right Ownership never actually provided any additional water for the land located in the SENE of Section 15, Township 11 South, Range 22 East, including the 3.4 acres purchased by Ricardo and Bertha Mendoza. Right 45-7672 was originally licensed for the irrigation of additional acres within the SENE of Section 15 with water from a single well (now owned by Oak Valley Land Company, LLC), with the license not providing for any additional diversion rate from the well. *Note that right 45-7672 includes a condition indicating that it is limited to a total combined diversion of 2.25 cfs (diversion rate of right 45-7141) when combined with rights 45-7141 and 45-7339B.*

It appears that there may be a couple of ways to approach dividing the water rights from the Blacker farm between Ricardo and Bertha Mendoza and Oak Valley Land Company, LLC...

As described in the Mendoza Notice of Change in Water Right Ownership, a 3.4 acre portion of right 45-7672 could be split into the name of Mendoza, with the remaining rights being placed in the name of Oak Valley Land Company, LLC, as described in the Oak Valley Land Company Notice of Change in Water Right Ownership. This would result in the following....

Right Owner	Right	Diversion Rate	Diversion Volume	Acre Limit	Total Acres
Mendoza	Portion of 45-7672	0.07 cfs	13.6 afa	3.4 acres	3.4 acres
Oak Valley Land Co.	Portion of 45-7672	0.43 cfs	86.4 afa	21.6 acres	371.6 acres
Oak Valley Land Co.	45-7141	2.25 cfs	592 afa	148 acres	371.6 acres
Oak Valley Land Co.	45-7339B	0.8 cfs	160 afa	40 acres	371.6 acres
Oak Valley Land Co.	45-14142	2.63 cfs	593.2 afa	148.3 acres	371.6 acres
	Oak Valley Land Co. Total	4.88 cfs	1431.6 afa	357.9 acres	371.6 acres

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Problems with the approach described above is that it provides Ricardo and Bertha Mendoza with a water right (portion of 45-7672) diverted from wells owned by Oak Valley Land Co. without actually providing Ricardo and Bertha Mendoza with any actual diversion rate for their water right since it would be dependent upon Oak Valley Land Company's right (45-7141). *Note that right 45-7672 includes a condition indicating that it is limited to a total combined diversion of 2.25 cfs (diversion rate of right 45-7141) when combined with rights 45-7141 and 45-7339B.* In addition, since Marvin and Lovel Blacker made portions of rights 45-7141, 45-7339B, and 45-14142 appurtenant to the Mendoza land via their water right transfer, Oak Valley Land Company does not currently have adequate documentation showing that they actually own all of rights 45-7141, 45-7339B, and 45-14142. Ricardo and Bertha Mendoza would have to convey (probably via quitclaim deed) any of their ownership in rights 45-7141, 45-7339B, and 45-14142 to Oak Valley Land Company, LLC.

Another approach would be to split the water rights proportionally based on the ownership of their currently described places of use. Since Ricardo and Bertha Mendoza own 3.4 acres of the 375 acres described on the water rights and Oak Valley Land Company, LLC owns 371.6 of the 375 acres described on the water rights the following would result...

Right Owner	Right	Diversion Rate	Diversion Volume	Acre Limit	Total Acres
Mendoza	Portion of 45-7672	0.01 cfs	0.8 afa	0.2 acres	3.4 acres
Mendoza	Portion of 45-7141	0.02 cfs	5.2 afa	1.3 acres	3.4 acres
Mendoza	Portion of 45-7339B	0.01 cfs	1.6 afa	0.4 acres	3.4 acres
Mendoza	Portion of 45-14142	0.02 cfs	5.2 afa	1.3 acres	3.4 acres
	Mendoza Total	0.04 cfs	12.8 afa	3.2 acres	3.4 acres
Oak Valley Land Co	Portion of 45-7672	0.49 cfs	99.2 afa	24.8 acres	371.6 acres
Oak Valley Land Co	Portion of 45-7141	2.23 cfs	586.8 afa	146.7 acres	371.6 acres
Oak Valley Land Co	Portion of 45-7339B	0.79 cfs	158.4 afa	39.6 acres	371.6 acres
Oak Valley Land Co	Portion of 45-14142	2.61 cfs	588.0 afa	147.0 acres	371.6 acres
	Oak Valley Land Co. Total	4.84 cfs	1432.4 afa	358.1 acres	371.6 acres

About the only potential problems with the approach outlined above is that Ricardo and Bertha Mendoza would have water rights diverted from wells owned by Oak Valley Land Company. In addition, Ricardo and Bertha Mendoza would have rights to irrigate slightly fewer acres (3.2 acres vs. 3.4 acres) of their land. However, a major advantage for Ricardo and Bertha Mendoza would be that they would have water rights with an actual diversion rate associated with them. Another advantage to the approach outlined above would be that the Department could proceed with the splits based on the currently submitted ownership documentation (no additional deeds would have to be drawn up).

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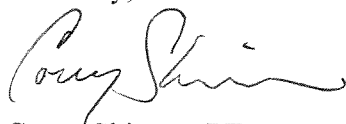
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However, due to the splitting of all four water rights a total filing fee of \$400.00 would be required (four rights split at \$100.00 each) and so far only a total of \$275.00 has been submitted (\$100.00 for Mendoza notice and \$175.00 for Oak Valley Land Company notice).

Both possible approaches outlined in this letter would result in Ricardo and Bertha Mendoza having water rights diverted from wells owned by Oak Valley Land Company. This may or may not be a desired outcome for the parties. If Ricardo and Bertha Mendoza desire to divert their portion(s) of the right(s) from their own well, they would have to file a water right transfer application to change the location of the authorized point of diversion for their portion(s) of the right(s). The filing fee for a transfer application involving less than 0.20 cfs of water is \$100.00, but ownership changes can be accomplished via the transfer process without additional filing fees. If it is desired to change the point of diversion for the Mendoza portion(s) of the right(s) it might be possible to accomplish the change and ownership updates utilizing the currently paid filing fees.

The nature of this letter and the complications and potential options that it is attempting to describe are somewhat difficult to understand. If desired, I am available to discuss this matter in person. It may be most advantageous for all of the parties to meet to discuss the existing problems and possible solutions. If you have any questions, or if I can be of any further assistance, feel free to contact me at your convenience.

Sincerely,

A handwritten signature in cursive script, appearing to read "Corey Skinner".

Corey Skinner, PE
Water Resource Engineer

cc: Larry Roberts – Burley Land Title & Escrow