

MEMORANDUM

DATE: February 16, 2011

TO: 34-10036 (file)

FROM: Jonie Barg Technical Records Specialist

RE: Ownership Change for 34-10036

Individuals present: Kirby Jensen, Joel Anderson, Dave Carlson, James Cefalo and Jonie Barg

Kirby Jensen and Joel Anderson came into the Eastern Region office to discuss an ownership change that was processed for Natural Guardian for water right number 34-10036. Mr. Jensen was disputing whether the ownership change should have taken place. During a review of the documents within the department, there was a deed supplied with the ownership change going from Juel Aikele to Natural Guardian, however the current owner of the water right was in the name of Kirby Jensen with the place of use in its entirety on the property of Natural Guardian, however within the department was an exchange agreement between Kirby and Sharon Jensen and Juel and Mary Anne Aikele there are a few lines within the agreement (see attached copy) that appear to be sufficient evidence for the ownership change, which are as follows:

"Conveyance of Water Rights: Decree Owners hereby transfer and convey to Well Owners the certain decreed water rights hereinafter described and well owners hereby transfer to the decree owners that certain state of Idaho water permit herein after described."

Also

"Well Failure: The parties recognize that the possibility exists that the well may fail or, for some reason, become un-economical to operate. In such event, each party agree that they will re-convey the water right conveyed to them, to the other party hereto, or to their heirs, successors and assigns."

The department feels this is sufficient evidence of conveyance and will maintain ownership on their records shown unless additional information is received showing ownership should be placed back in the name of Kirby Jensen.

WATER EXCHANGE AGREEMENT

(With Easements)

THIS AGREEMENT, by and between JUEL AIKELE and MARY ANNE AIKELE, Husband and Wife, hereinafter called "Well Owners," and KIRBY A. JENSEN and SHARON JENSEN, Husband and Wife, hereinafter called "Decree Owners;"

Conveyance of Water Rights: Decree Owners hereby transfer and convey to Well Owners the certain Decreed Water Rights hereinafter described and Well Owners hereby transfer to Decree Owners that certain State of Idaho Water Permit hereinafter described.

Water Rights Exchanged: Decree Owners are the owners of a Decreed Irrigation Water Right, to-wit:

73 miner's inches of Decreed water from the Big Lost River, with a priority date of May 20, 1884.

Well Owners have heretofore purchased from Decree Owners an irrigation well, which well is located and now exists near the North boundary line of the SE $\frac{1}{4}$ NE $\frac{1}{4}$, Section 17, Township 4 North, Range 26 East, Boise Meridian, Butte County, Idaho, together with State of Idaho Water Permit No. 34-7210. The well is on the South side of a private road owned by Decree Owner and is approximately 1782 feet West of the North-South county road. Decree Owners will furnish the existing pump, etc. for use on the well, and operation costs will be shared as hereinafter provided.

Well Owners transfer to Decree Owners the water right represented by State of Idaho Water Permit No. 34-7210, and water produced by the well, pump, motor, etc., above-described.

Costs of Operation and Use: The parties agree that each shall pay 50% of the cost of operation of the pump, motor, and electrical equipment, including but not limited to: Electrical demand charges, other electrical charges, repair, maintenance and replacement of the pump, motor and electrical equipment.

MICROFILMED
SEP 09 1992

Well Owners will pay the charges of Big Lost River Irrigation District, chargeable for use of the facilities of the District to transport the Decreed Water to the boundary of the District, and all costs of conveyance from the District boundary to the place of use.

In the event of well failure, by reduction of ground water level, collapse of well, etc., Well Owner agrees to restore the well to usefulness as soon as reasonably possible, not to exceed one year.

Easements: The parties acknowledge that the well owned by Well Owners is located on the land of Decree Owners. Decree Owners grant to Well Owners perpetual, non-exclusive easements as follows:

1. For the purpose of maintaining the well and equipment on the property, and for the purpose of repair, maintenance, construction, reconstruction and operation of the well.
2. Ingress and Egress over Decree Owners land for all purposes set forth in "1." above.

Well Failure: The parties recognize that the possibility exists that the well may fail or, for some reason, become un-economical to operate. In such event, each party agrees that they will reconvey the water right conveyed to them, to the other party hereto, or to their heirs, successors and assigns.

Contingent on Approval: The parties agree that the conveyance of water rights herein is contingent on approval thereof by the State Department of Water Resources, without change in the volume, priority and without attachment of additional condition of usage by the Department.

Binding on Successors and Assigns - Appurtenancy:

This Agreement shall be binding upon, and inure to the benefit of the successors and assigns of the parties, and shall be appurtenant to the following lands of the respective parties, in Butte County, Idaho, to-wit:

MICROFILMED
SEP 09 1992

STATE OF IDAHO)
 : ss.
County of Butte)

On this 2nd day of June, 1988, before me, the undersigned, a Notary Public in and for said State, personally appeared KIRBY A. JENSEN and SHARON JENSEN, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

(SEAL)

William H. Henson
Notary Public for Idaho,
Residing at Arco, Idaho,
Commission expires: 11/3/93

MICROFILMED
SEP 09 1992

Decree Owners:

Township 4 North, Range 26 East, Boise Meridian,
SE $\frac{1}{4}$ NE $\frac{1}{4}$, Section 17
W $\frac{2}{3}$ of SW $\frac{1}{4}$ NW $\frac{1}{4}$, Section 16
E $\frac{1}{3}$ of SW $\frac{1}{4}$ NE $\frac{1}{4}$, Section 17

Well Owners:

E $\frac{1}{2}$ of NE $\frac{1}{4}$ of Section 13, Township 3 North,
Range 25 East, Boise Meridian

In witnesseth whereof, the parties hereto set their
hands and seals this 3rd day of June,
1988.

Juel Aikele
JUEL AIKELE

Mary Anne Aikele
MARY ANNE AIKELE

"WELL OWNERS"

Kirby A. Jensen
KIRBY A. JENSEN

Sharon Jensen
SHARON JENSEN

"DECREE OWNERS"

STATE OF IDAHO)
 : ss.
County of Butte)

On this 3rd day of June, 1988, before me,
the undersigned, a Notary Public in and for said State,
personally appeared JUEL AIKELE and MARY ANNE AIKELE, known
to me to be the persons whose names are subscribed to the
within instrument, and acknowledged to me that they executed
the same.

IN WITNESS WHEREOF, I have hereunto set my hand and
affixed my official seal, the day and year in this certi-
ficate first above written.

(SEAL)

Sharon McAffee
Notary Public for Idaho,
Residing at Arco, Idaho.
Commission expires: 8/25/92

MICROFILMED
SEP 09 1992

AUTHORIZATION AND AGREEMENT OF RELEASE

Undersigned, Federal Land Bank of Spokane, a part of the Farm Credit System, authorizes the exchange of water rights set out in a certain Water Exchange Agreement, dated June 2, 1988, between Juel and Mary Anne Aikele, described in such agreement as "Well Owners," and KIRBY A. JENSEN and SHARON JENSEN, described therein as "Decree Owners," and agrees to release the lien of its mortgage given by Jensens, as to the 73 miner's inches of Decreed water from the Big Lost River, with a priority date of May 20, 1884, on the following conditions:

1. That the Water Permit No. 34-7210, for a certain well, is converted to a Water License, appurtenant to the Real Property owned by Kirby A. and Sharon Jensen, which is subject to Federal Land Bank's mortgage thereon, under Loan No. FLB194903-9.
2. That a copy of the Water License, issued to Kirby A. Jensen and Sharon Jensen, showing such appurtenancy, is furnished to Federal Land Bank.
3. That a fully executed copy of said Water Exchange Agreement be furnished to Federal Land Bank for its file.

Upon performance of the said conditions, Federal Land Bank will issue its Partial Release of Mortgage, for the Decreed Water, pursuant to its usual rules as to application and fees, in existence at the time of request.

Dated this 3rd day of June, 1988.

FEDERAL LAND BANK

By: Henry B. Salbia

Its: Authorized Agent

MICROFILMED

SEP 09 1992