

Rushing, Emalee

From: Rushing, Emalee
Sent: Tuesday, April 15, 2008 5:20 PM
To: 'lvrenz@adelphia.net'
Subject: Change of Ownership for Water Right No. 95-2162

Mr. Renz,

Thank you for the additional documentation submitted to the department on March 11, 2008 in support of the Notice of Change in Water Right Ownership. Section 42-248, Idaho Code requires that the notice "...shall be accompanied by evidence showing the basis for the change in ownership..." The documentation you submitted does not provide sufficient evidence that a water right was conveyed to Big Sky Estates HOA.

Water rights are appurtenant to the land and are conveyed with the land unless specifically excluded. The following is a link to a final order on our website that may provide some background for the legal basis for the department's position regarding water right ownership.

<http://www.idwr.idaho.gov/about/orders/Murgoitio%20Final%20Order.pdf>

Unless an appurtenant water right was specifically excluded from the conveyance to individual lot owners, a water right may have been conveyed, in parts, to each individual lot owner within the place of use described by the water right. To support a change in water right ownership from Brickert to Big Sky Estates HOA, the department would need evidence supporting a direct conveyance of the water right from Brickert to Big Sky (prior to the sale of land to individual lot owners) - or evidence supporting conveyance of the water right from individual lot owners to Big Sky (possibly through quit-claim deeds from the owners). If you have other evidence of ownership of the water right by Big Sky, you can provide it to the department for consideration. The department cannot change legal ownership of a water right, but can only record a change that has already occurred through proper conveyance.

Questions of ownership can be resolved by a court through a quiet-title action. The North Idaho Adjudication is likely to commence in the coming months and will require filing of claims to water rights by water right owners. Big Sky could file a claim to the water right once the adjudication process is commenced in order to obtain a legal determination regarding ownership of the water right. You can go to the department's website at the following link for more information about the adjudication process:

http://www.idwr.idaho.gov/water/North_Id_Adju/

Feel free to call or email should you have further questions.

Thank you,
Emalee Rushing

Idaho Dept. of Water Resources
322 E Front St
PO Box 83720
Boise ID 83720-0098
Phone: 208-287-4952
Fax: 208-287-6700
Email: emaalee.rushing@idwr.idaho.gov