

MEMORANDUM

TO: Files involving Donna Bell Trust Water Rights Splits

FROM: Angela Grimm

DATE: June 27, 2008 Amended January 6, 2009

RE: Calculations of Donna Bell Trust Water Rights Splits

The original Donna Bell Trust parent rights are 61-2127 and 61-4136 as follows:

61-2127: 0.64 cfs / 114.99 AFA / 32 AC (52 AC PPU)

61-4136: 0.28 cfs / 80.0 AFA / 20 AC (52 AC PPU)

61-2127 + 61-4136: 0.74 cfs / 114.99 AFA / 52 AC

Deeds submitted for various lots within the Bell Country Estates along with a letter from the attorney for Donna Bell Trust established deeds for lots 1, 2, 3, 4, 6 and 7 issued sold a proportionate share of each of the parent water rights to a new owner. The portion sold was from a total of 52.7 acres rather than 52 acres covered by the water rights. The deeds also withheld 5 acres from the water right being sold. Based on the proportion noted in the deeds and the assumption the 5 acres was intended to be withheld only once, the following calculations illustrate the water right acre (WR AC) per land acre (LD AC) each owner was sold:

Acreage Calculations:

Deeds reference a certain amount of acres sold out of 52.7 AC total when the water right only covers 52 AC:

$$52/52.7 = .986717 * 100 = 98.6717 \% \text{ of WR per LD AC}$$

$$1 \text{ LD AC} = 0.986717 \text{ WR AC}$$

Deeds also withhold 5 AC:

$$52 \text{ AC} - 5 \text{ AC} = 47 \text{ AC}$$

$$47/52 * 100 = 90.384615 \% \text{ WR available for sale per LD AC}$$

Therefore:

$$\# \text{ LD AC sold} * 0.986717 * 0.90384615 = \# \text{ WR AC purchased}$$

Ex. 11.34 LD AC sold to Crossley:

$$11.34 \text{ LD AC} * 0.986717 * 0.90384615 = 10.1 \text{ WR AC}$$

Due to the initial withholding of five acres and the portion being sold from 52.7 acres rather than 52 acres, each new owner will have less water right acres than actual land acres thereby creating a small permissible place of use for lots 1, 2, 3, 4, 6 and 7. For example, Crossley (Lots 6 & 7) is entitled to 10.1 acres of water rights even though he purchased 11.34 acres of land. The 11.34 acres is entirely within the original place of use. Therefore, Crossley has a combined limit allowing irrigation of 10.1 acres within an 11.34 acre permissible place of use.

The 5 acres of water right withholding was not in the deeds for lots 5, 8, 9, and 10. Therefore, the owners of these lots were sold all the water right appurtenant to the property.

The following calculation illustrates the amount of water right acres (WR AC) per water right:

AC amount from each WR:

61-2127: $32 \text{ AC} / 52 \text{ AC} * 100 = 61.53846\%$ of total WR

61-4136: $20 \text{ AC} / 52 \text{ AC} * 100 = 38.46154\%$ of total WR

Ex. 11.34 LD AC i.e. 10.1 WR AC purchased by Crossley

61-2127: $10.1 \text{ AC} * 0.6153846 = 6.2 \text{ AC}$

61-4136: $10.1 \text{ AC} * 0.3846154 = 3.9 \text{ AC}$

The following calculation illustrates the rate of flow, volume, and acreage per acre:

Flow/Volume/Acre Amount per AC:

61-2127: $0.64 \text{ cfs} / 32 \text{ AC} = 0.02 \text{ cfs/AC}$

$114.99 \text{ AFA} / 32 \text{ AC} = 3.6 \text{ AFA/AC}$

61-4136: $0.28 \text{ cfs} / 20 \text{ AC} = 0.014 \text{ cfs/AC}$

$80.0 \text{ AFA} / 20 \text{ AC} = 4.0 \text{ AFA/AC}$

61-2127 + 61-4136: $0.74 \text{ cfs} / 52 \text{ AC} = 0.014 \text{ cfs/AC}$

$114.99 \text{ AFA} / 52 \text{ AC} = 2.2 \text{ AFA/AC}$

Attached is a table outlining the resultant water right quantities based on the above calculation methods based on lot sizes according to deed information and Elmore County tax lot data.

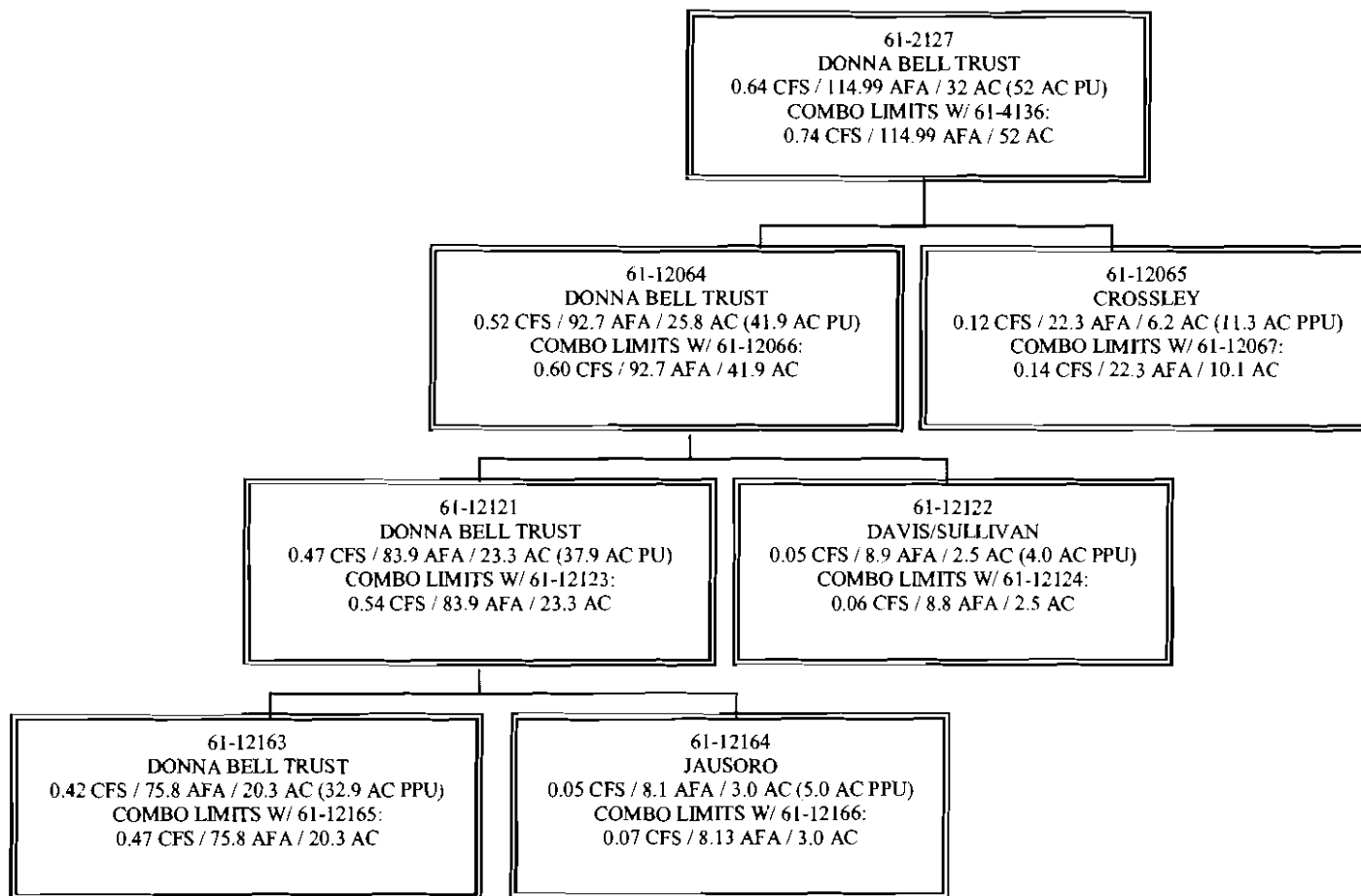
Split trees outlining the splits of the two parent rights that have been accomplished through processing of one transfer (transfer no. 72401 Crossley Lots 6 & 7) and two ownership changes (Lot 1 Jausoro and Lot 4 Sullivan/Davis) are attached. The quantities given to Jausoro and Sullivan/Davis through change of ownership approvals do not match those calculated using the methods outlined above, which are based on the first split of the rights accomplished through approval of transfer no. 72401. It appears the calculations conducted during processing of the change of ownerships were in error. Revised split trees including the correct quantities for each right and the two transfer applications currently being processed (transfer no. 73782 Cruser and transfer no. 73844 Roberts) are attached.

Bell Country Estates Water Rights

Lot	1	2	3	4	5	6 + 7	8	9	10	W/held by Initial Deeds/Remaining Portion
61-2127: Acres	2.8	2.8	2.8	2.2	3.1	6.2	3.3	3.1	3.3	2.4
Flow (cfs)	0.06	0.06	0.06	0.04	0.06	0.12	0.07	0.06	0.07	0.04
Volume (AFA)	10.1	10.1	10.1	7.9	11.1	22.3	11.9	11.1	11.9	8.5
61-4136: Acres	1.8	1.7	1.7	1.4	1.9	3.9	2.1	1.9	2.0	1.6
Flow (cfs)	0.03	0.02	0.02	0.02	0.03	0.06	0.03	0.03	0.03	0.01
Volume (AFA)	7.2	6.8	6.8	5.6	7.6	15.6	8.4	7.6	8.0	6.4
Combo Limit: Acres	4.6	4.5	4.5	3.6	5.0	10.1	5.4	5.0	5.3	4.0
Flow (cfs)	0.07	0.06	0.06	0.05	0.07	0.14	0.08	0.07	0.08	0.06
Volume (AFA)	10.1	10.1	10.1	7.9	11.1	22.3	11.9	11.1	11.9	8.5
Total Acre PPU	5.1	5.1	5.1	4.0	5.0	11.3	5.4	5.0	5.3	N/A

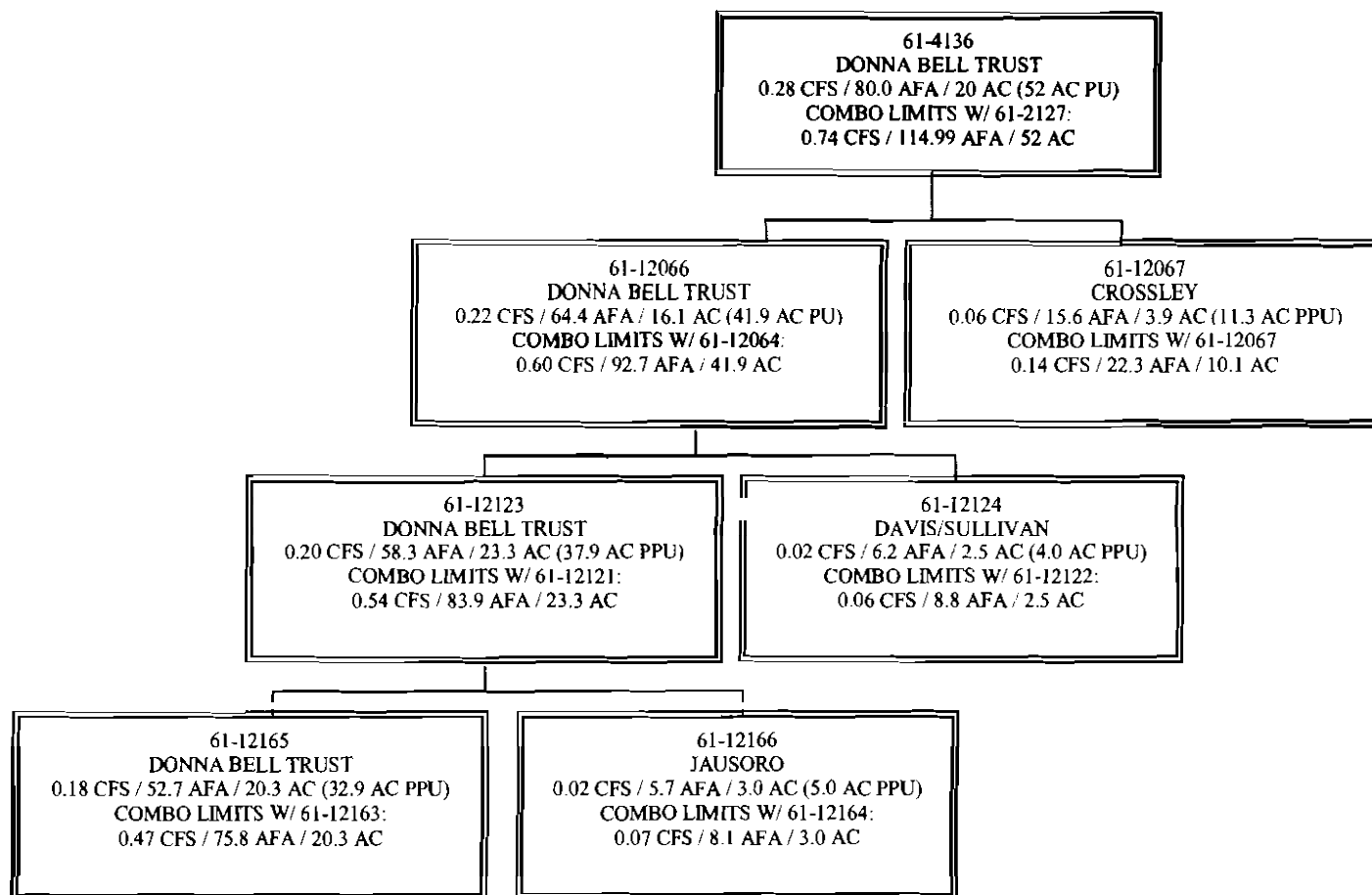
61-2127 DONNA BELL TRUST SPLIT TREE

**RIGHTS HAVE BEEN
SPLIT AND ARE NO
LONGER ACTIVE**



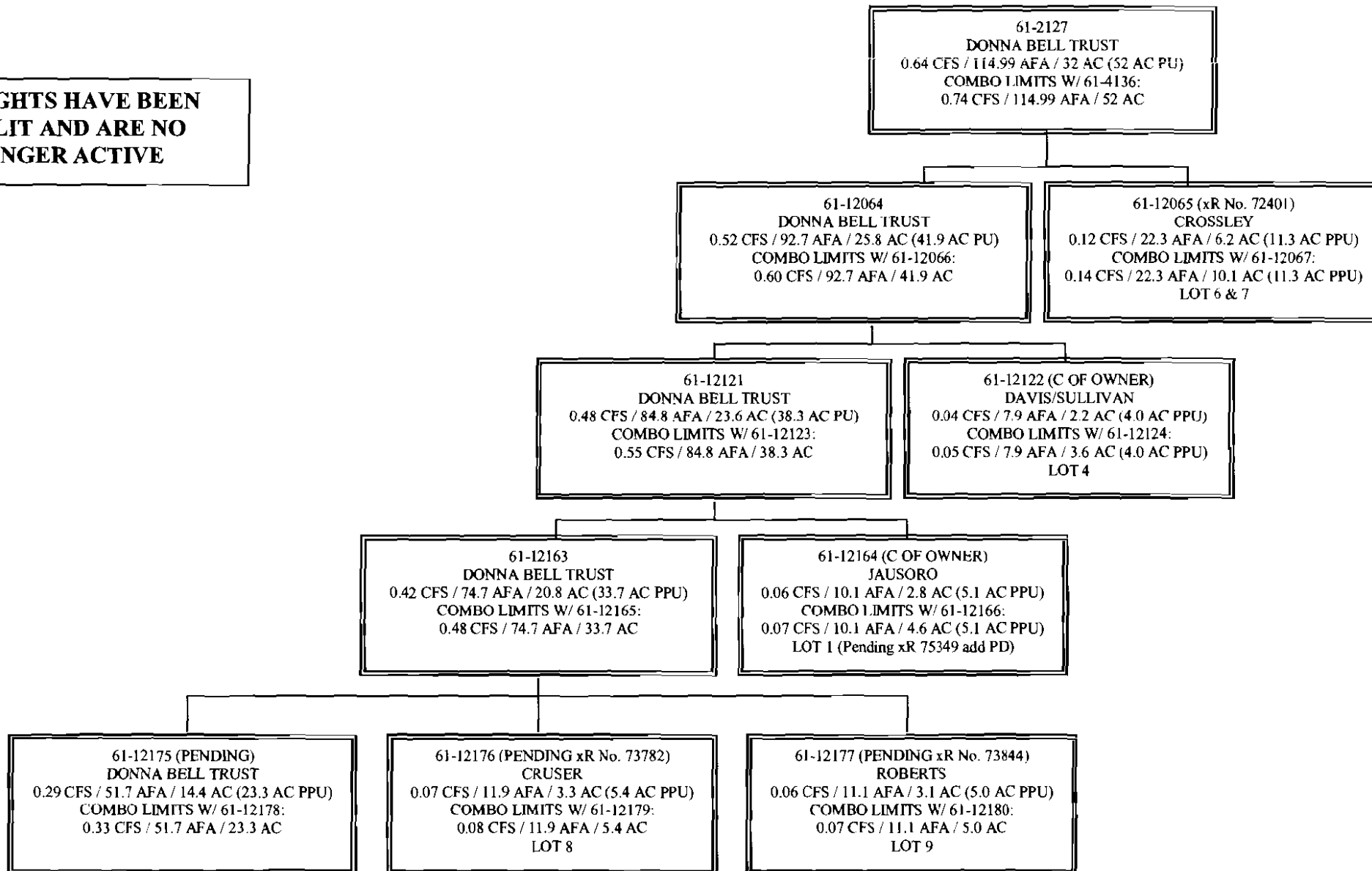
61-4136 DONNA BELL TRUST SPLIT TREE

**RIGHTS HAVE BEEN
SPLIT AND ARE NO
LONGER ACTIVE**



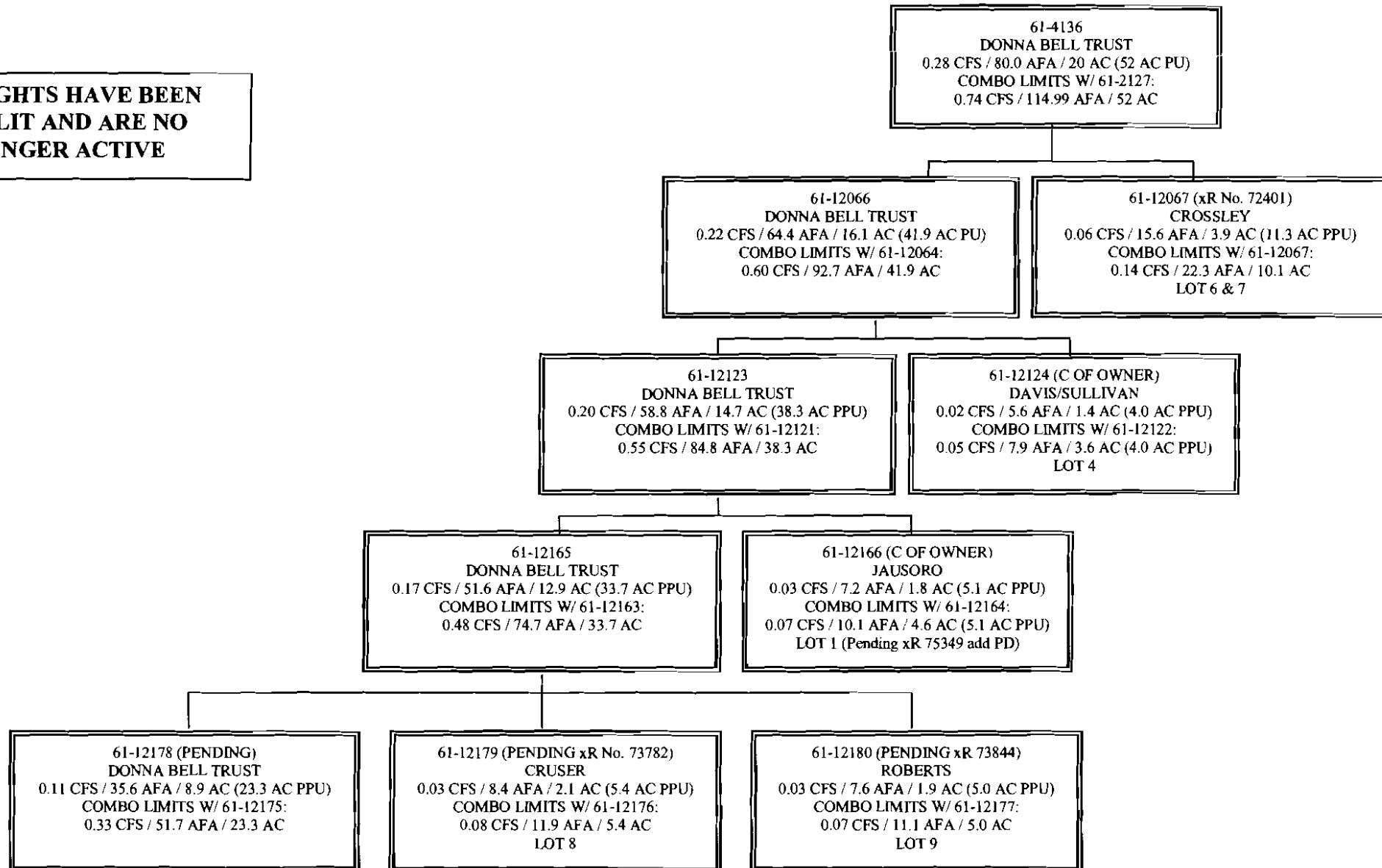
61-2127 DONNA BELL TRUST SPLIT TREE REVISED

**RIGHTS HAVE BEEN
SPLIT AND ARE NO
LONGER ACTIVE**



61-4136 DONNA BELL TRUST SPLIT TREE REVISED

**RIGHTS HAVE BEEN
SPLIT AND ARE NO
LONGER ACTIVE**



AFFIDAVIT OF RALPH ROBERT "ROCKY" TOWLE

STATE OF IDAHO)
) ss.
COUNTY OF ELMORE)

Ralph Robert Towle, being first duly sworn, deposes and says:

I make this affidavit as the trustee of the Donna L. Bell Marital Trust concerning Bell Country Estates. Donna L. Bell purchased the Job Farm in 1980. Dr. Bell intended to someday develop a subdivision on the property. Dr. Bell passed away on September 20, 1995, before a subdivision could be developed. Dr. Bell's Last Will and Testament provided that the land was to go into the Donna L. Bell Marital Trust and she asked that the property be subdivided and developed. I am Dr. Bell's cousin and was named in her will to act as trustee of the Marital Trust.

When Dr. Bell purchased the property it had water rights sufficient to irrigate the ground to pasture livestock or raise hay. The Water Right Numbers for the property were 61-02127 and 61-04136. Because the development of a ten-lot subdivision on the property would result in houses, garages, patios, driveways and roads being built upon which no irrigation water could be used, the decision was made to not sell the "extra" water rights in Bell Country Estates with the sales of the lots, but reserve them to sell at a later date. The assumption was made that this would be approximately five acres. The decision was therefore made that as the lots were sold, a provision would be placed in each of the deeds reserving from the total water rights a total of five acres. It was felt that if this reservation was made in each of the deeds, there would be approximately five acres not transferred to the owners of the lots that would be available to sell for use elsewhere. Under Idaho Law, if no reservation is made in the deed, the water right transfers with the property.

The reservation of the water rights was not included in the deeds for Lots 5, 8, 9 and 10. Because the reservation of the water rights was not included in these deeds, the purchasers of Lots 5, 8, 9 and 10 received all of the water rights appurtenant to the property they purchased.

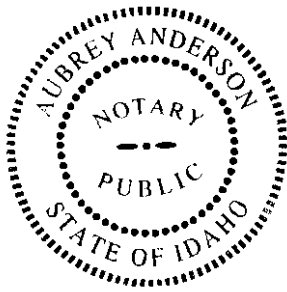
One property owner purchased both Lots 6 and 7 and combined them into one larger lot. Because there would be no house, garage, patio etc. constructed on one of the lots, it was agreed that the reservation of the water rights would not be made on one of the lots. The reservation was included in the deeds of the other four lots and on the sale of the combined Lots 6 and 7.

The first lot in Bell Country Estates Subdivision that was sold (Lot 2) was sold in October of 2003. The sale of the last lot in the subdivision to be sold (Lot 10) was closed in May of 2006.

Through the involvement of the Donna L. Bell Marital Trust in the development of Bell Country Estates Subdivision and the sale of the lots there certainly has not been any intent by the developer or the owners of the lots to abandon or forfeit any of the water rights associated with this subdivision.

Ralph Robert Towle Trustee
Ralph Robert Towle TRUSTEE

SUBSCRIBED AND SWORN to before me this 31 day of December, 2008.



Aubrey Anderson
Notary Public for Idaho
Residing at: Buhl
My commission expires: 8/24/11

HALL, FRIEDLY & WARD

A Professional Association
Attorneys at Law
340 East 2nd North
Mountain Home, Idaho 83647

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WATER RESOURCES
WESTERN REGION

Telephone
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Fax
(208) 587-3144
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jay@hfwlaw.com

Jay R. Friedly
Robert W. Ward
Brian B Peterson

Perce Hall
(1913-2007)

December 19, 2008

Re: Bell Country Estates Water Rights

To Whom It May Concern:

I write this as the attorney for Donna L. Bell Marital Trust concerning Bell Country Estates. Donna L. Bell purchased the Job Farm in 1980. Dr. Bell intended to someday develop a subdivision on the property. Dr. Bell passed away on September 20, 1995, before a subdivision could be developed. Dr. Bell's Last Will and Testament provided that the land was to go into the Donna L. Bell Marital Trust and she asked that the property be subdivided and developed.

When Dr. Bell purchased the property it had water rights sufficient to irrigate the ground to pasture livestock or raise hay. The Water Right Numbers for the property were 61-02127 and 61-04136. Because the development of a ten-lot subdivision on the property would result in houses, garages, patios, driveways and roads being built upon which no irrigation water could be used, the decision was made to not sell the "extra" water rights in Bell Country Estates with the sales of the lots, but reserve them to sell at a later date. The assumption was made that this would be approximately five acres. The decision was therefore made that as the lots were sold, a provision would be placed in each of the deeds reserving from the total water rights a total of five acres. It was felt that if this reservation was made in each of the deeds, there would be approximately five acres not transferred to the owners of the lots that would be available to sell for use elsewhere. Under Idaho Law, if no reservation is made in the deed, the water right transfers with the property.

The reservation of the water rights was not included in the deeds for Lots 5, 8, 9 and 10. Because the reservation of the water rights was not included in the deeds, the purchasers of Lots 5, 8, 9 and 10 received all of the water rights appurtenant to the property they purchased.

One property owner purchased both Lots 6 and 7 and combined them into one larger lot. Because there would be no house, garage, patio etc. constructed on one of the lots, it was agreed that the reservation of the water rights would not be made on one of the lots. The reservation was included in the deeds of the other four lots and on the sale of the combined Lots 6 and 7.

The first lot in Bell Country Estates Subdivision that was sold (Lot 2) was sold in October of 2003. The sale of the last lot in the subdivision to be sold (Lot 10) was closed in May of 2006.

Ralph Robert Towle is the trustee of the Donna L. Bell Marital Trust and the person, as trustee, who has taken the lead in the development of Bell Country Estates Subdivision. To the best of his recollection the pasture on the ground comprising Bell Country Estates was irrigated until just before or after the first lot was sold in October of 2003.

It is our understanding that at the time of closing of the sales of some of the lots in Bell Country Estates Subdivision a transfer of water rights form was not completed and submitted to the Idaho Department of Water Resources. It is further our understanding that some of the owners of the lots that have submitted transfer of water rights forms have been told that there may be an issue with the forfeiture of the water rights. I have been asked to submit this letter in support of those lot owners who are now applying to have the water rights appurtenant to their properties transferred. It is our position that the water rights have not been forfeited.

To the best of Mr. Towle's recollection the irrigation of the pasture on the property did not cease until the fall of 2003. Thus the forfeiture period of five years had not expired when the applications to transfer the water rights were submitted to IDWR.

It is our understanding from talking with some of the owners of the lots seeking to transfer the water rights into their names that not all of the owners of the lots intend on utilizing the irrigation water rights appurtenant to the property they purchased.

Because of the fact that the deeds for four of the lots did not reserve any of the water rights, the fact that the intended reservation was not made for both Lots 6 and 7 so they could be developed as one large lot, and to demonstrate to IDWR its support for the appropriate transfer of the water rights as requested and other reasons, the Donna L. Bell Marital Trust, as the developer of the property, has decided not to try and sell the water rights reserved to a third party to be transferred to another parcel of property. If IDWR desires something in writing concerning the intent not to transfer these water rights, please let us know.

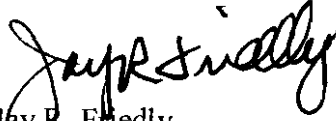
None of the water rights appurtenant to the Bell Country Estates property were placed in the water supply bank. At the time, with the lots selling like they were, it was thought not to be necessary.

Because of the facts that the five-year forfeiture period has not run, some of the appurtenant irrigation water rights will evidently not be used for irrigation, the Donna L. Bell Marital Trust does not intend on selling the reserved water rights to be transferred off the property, and other reasons, we urge IDWR to grant the applications for transfer of those owners of the lots who are now applying.

Through the involvement of the Donna L. Bell Marital Trust in the development of Bell Country Estates Subdivision and the sale of the lots there certainly has not been any intent by the developer or the owners of the lots to abandon or forfeit any of the water rights associated with this subdivision.

If we can provide any additional information, please let us know.

Sincerely yours,



Jay R. Friedly

JRF:alm

cc: Mr. Ralph "Rocky" Towle, Trustee

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State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way • Boise, Idaho 83705-5082
Phone: (208) 334-2190 • Fax: (208) 334-2348 • Web Site: www.idwr.idaho.gov

C.L. "BUTCH" OTTER

Governor

DAVID R. TUTTILL, JR.

Director

FAX COVER SHEET

Fax # (208) 334-2348

DATE: 8/27/08TO: ALAN ROBERTSFROM: ANGIE GRAY587-2970 faxIDWR - WESTERN REGION587-9396 phoneDOCUMENT DESCRIPTION: I SINCERELY APOLOGIZE, BUT I BELIEVE THEORIGINAL PACKET WAS MAILED TO THE OLD CONTACT INFO - JERRY ASHCRAFT.I HAD CREATED THE DISTRIBUTION LIST FOR THE INFO PACKET PRIOR TORECEIVING YOUR REQUEST NOT TO SEND INFORMATION REGARDING THIS TRANSFERTO YOUR AGENCY. I FAILED TO UPDATE THE LIST BEFORE I ASKED MY
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C. L. "BUTCH" OTTER

Governor

DAVID R. TUTTILL, JR.

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FAX COVER SHEET

Fax # (208) 334-2348

DATE: 8/22/06

TO: ALAN ROBERTS

FROM: ANGIE GRAY

587-7970 fax

IDWR - WESTERN REGION

587-9396 phone

DOCUMENT DESCRIPTION: I SINCERELY APOLOGIZE BUT I BELIEVE THE ORIGINAL PACKET WAS MAILED TO THE OLD CONTACT INFO - LARRY ASHCRAFT. I HAD CREATED THE DISTRIBUTION LIST FOR THE INFO PACKET PRIOR TO RECEIVING YOUR REQUEST NOT TO SEND INFORMATION REGARDING THIS TRANSFER TO YOUR AGENCY. I FAILED TO UPDATE THE LIST BEFORE I ASKED MY ASSISTANT TO MAIL THE PACKETS OUT. AGAIN, I AM VERY SORRY FOR THE MISTAKE ON MY PART. I MAILED A COPY OF THIS LETTER AND THE INFO TOTAL # OF PAGES (INCLUDING COVER): 3 PACKET TO THE ADDRESS ON THIS LETTER.

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State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way • Boise, Idaho 83705-5082

Phone: (208) 334-2190 • Fax: (208) 334-2348 • Web Site: www.idwr.idaho.gov

C. L. "BUTCH" OTTER
Governor

DAVID R. TUTHILL, JR.
Director

FAX COVER SHEET

Fax # (208) 334-2348

DATE: 8/27/08

TO: ALAN ROBERTS

587-2970 fax

587-9396 phone

FROM: ANGIE GRIMM

IDWR - WESTERN REGION

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MOUNTAIN HOME ID 83647-5316
FORM 3547

Bell Country Estates Info

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RALPH ROBERT TOWLE TRUSTEE
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BOISE ID 83706

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*Bell Country
Estates Water
rights issues.*



State of Idaho

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C. L. "BUTCH" OTTER
Governor

DAVID R. TUTHILL, JR.
Director

August 15, 2008

Alan D. Roberts and Sue L. Roberts
205 South 14th East
Mountain Home, ID 83647

COPY

Re: Application for Transfer No. 73844 Forfeiture Issue

Dear Mr. and Mrs. Roberts:

As you are aware, The Idaho Department of Water Resources (Department) is currently reviewing the above referenced application for transfer to change water rights appurtenant to your property. In addition to the general information packet of August 15, 2008 I have prepared for all the lot owners in the Bell Country Estates, I wish to offer this letter to further explain the forfeiture principle and how it applies to your specific transfer application.

As the general information letter states, loss or forfeiture of a water right occurs when that right is not put to beneficial use for a five year term. Once forfeit, the water right reverts to the State and is available, ideally, for appropriation. Some acceptable defenses against loss and forfeiture of a right for non-use are found in Idaho Code § 42-223. I have enclosed a copy of this section of Idaho Code for your reference. Other defenses might be acceptable based on the facts of a specific case.

Absent evidence of beneficial use or an acceptable defense against forfeiture, the practice of resumption of use of a water right has been allowed in some instances by the Idaho Supreme Court (Court). Resumption of use occurs when beneficial use is re-established for water rights that have undergone a 5 year or longer period of non-use. The Court determined the water rights shall not be forfeit so long as resumption of the use did not injure other water right users and/or third parties had not made claim to or application for new appropriations from the water right(s) source.

The water rights associated with your property, portions of 61-2127 and 61-4137, are within the Mountain Home Ground Water Management Area (GWMA). The Department currently has applications on file for new appropriation of ground water for consumptive use in this area. Resumption of use would most certainly injure existing water right users in this area of depleted ground water as well as the applicants who have requested a new water right prior to resumption.

All of the above considered, evidence of beneficial use within the previous 5 year period or an acceptable defense against forfeiture are the only options the Department has determined in this instance as a way of avoiding a forfeiture determination in regard to these water rights. Without this

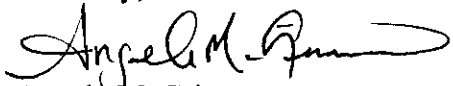
Roberts
August 15, 2008
Page 2 of 2

information, your transfer application will be denied on the basis that the rights involved have been forfeited.

As per your June 25, 2008 letter, the Department recognizes your request for a 6 month delay in processing of your transfer application. Therefore, processing of the application referenced above will be held until December 25, 2008, pending any requests you may submit for action(s) prior to that date. To further process this application, evidence of beneficial use or an acceptable defense to forfeiture must be received. If this information can not be provided in this time frame, the Department recommends you withdraw your current transfer application and receive a refund of the application fee paid. I have enclosed a withdrawal form should you choose this option. If the requested information or a withdrawal is not received by **December 25, 2008**, the Department will issue a preliminary order to deny the application and the application fee will not be refunded.

IDWR forms and other information are available on the Internet at www.idwr.idaho.gov. I apologize I was unable to determine additional alternatives to avoid forfeiture, as we had hoped I would, through my readings into case law on forfeiture issues or by any other means. Please contact me at 208-334-2190 if you have any questions or if I can do anything more.

Sincerely,



Angela M. Grimm
Sr. Water Resource Agent

Enclosure(s): Idaho Code § 43-223
Withdrawal of Application for Transfer Application form



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way • Boise, Idaho 83705-5082

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C. L. "BUTCH" OTTER
Governor

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Director

August 15, 2008

See Distribution List

COPY

Re: Bell Country Estates Water Rights

To Whom It May Concern:

Recently, the Idaho Department of Water Resources (Department) has begun processing Applications for Transfer of Water Right(s) for lots in the Bell Country Estates. These transfer applications involve a combined system of two original parent water rights, numbers 61-2127 and 61-4137. The applicants propose to split each water right, change the ownership of their portion of the rights, and add a point of diversion to allow for irrigation of their lot from a well on their property. Two changes of ownership and one transfer have been processed to date.

A Notice of Change in Water Right Ownership was previously processed for Lot 1 and Lot 4 within the Bell Country Estates. Each change of ownership split the rights and changed the ownership on record for the applicants' portions of the two parent rights. The changes of ownership authorize irrigation of the lots with water from the original well used to irrigate the land prior to subdividing of the property. Irrigation from a different well is not authorized.

The one transfer application previously processed and approved split the water rights, changed the ownership of the applicant's portion of each parent water right, and added a point of diversion for the water rights on Lot 6 and Lot 7. This authorizes the applicant to irrigate Lot 6 and Lot 7 with water from a well on the individual's lot rather than the original well.

Idaho Code § 42-222 and Department policy require evaluation of the following factors when reviewing a proposed transfer:

1. Whether there would be injury to other water rights.
2. Whether there would be an enlargement in use of the original water right(s).
3. Whether the proposed use would be a beneficial use.
4. Whether the proposed use would be in the local public interest.
5. Whether the proposed use would be consistent with the conservation of water resources within the State of Idaho.

Bell Country Estates Water Rights

August 15, 2008

Page 2 of 3

6. Whether the proposed change would impact the agricultural base of the local area.
7. The validity of the water right(s), or portion thereof, being changed.
8. The applicant's authority to file the transfer.

During this evaluation, the Department reviews all elements of the water right(s) proposed for transfer. Evaluation of the validity of the water right(s) involves determining the extent to which the right was put to beneficial use within the five (5) year period prior to filing of the transfer application. Idaho Code § 42-222 states rights not put to beneficial use as appropriated for a term of five years shall be lost and forfeited. Once forfeit, the rights revert to the State and can be again subject to appropriation. To avoid forfeiture of a right or portion of a right, proof of beneficial use or a defense against forfeiture, as outlined in Idaho Code § 42-223, must be evident. Proof of beneficial use for irrigation water rights can include various information such as photographs, affidavits, pump and/or power records, etc. Evidence of beneficial use of the water right(s), as appropriated, within the previous five year period or an acceptable defense against forfeiture must be established during the transfer review, either through information available to the Department or submittal of information by the transfer applicant.

Irrigation of more than one-half (½) acre requires a water right. The Bell Country Estates property is within the Mountain Home Ground Water Management Area (GWMA), a restricted area established in 1982 to prevent further declines in ground water levels. It is very difficult to acquire new ground water rights in a GWMA. Acquiring existing water rights in this area can be difficult and costly.

In this instance, the Bell Country Estates, each lot has appurtenant water rights as outlined in the accompanying table Bell County Estates Water Rights. Quantities in this table were calculated based on deed information submitted in previous transfer and change of ownership applications received as well as Elmore Co. tax lot data. Deed information submitted indicated an unspecified five (5) acres worth of the water rights was withheld by the owner. As a result, the portion withheld has been split between each lot creating a permissible place of use situation for each property. In other words, each lot has slightly less water right acreage than physical property acreage as indicated in the Bell Country Estates Water Rights table.

Enclosed you will find an example of a transfer application, which illustrates how an application should be completed for a lot in this subdivision. If the lot owners wish to irrigate more than one-half (½) acre of land, it is in their best interest to apply for a transfer to change the ownership of their portion of the parent water rights and add a point of diversion to allow for irrigation from their individual well as it is difficult to acquire water rights in this area. Should the owner choose to file a transfer application,

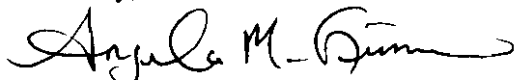
Bell Country Estates Water Rights
August 15, 2008
Page 3 of 3

the application should include a warranty deed or some other form of acceptable documentation showing ownership of their lot, a map showing the lot and where the well is located, and evidence of beneficial use of the water rights, as appropriated, within the last five (5) years or an acceptable defense against forfeiture. I have enclosed a blank application for transfer along with the Bell Country Estates Water Rights table and map for your use and reference. Prior to filing a transfer application, please contact the Department to determine the water right numbers affected by the transfer and obtain water right summary information to attach to the application (Attachment A and Attachment B mentioned in the enclosed transfer application example).

The two transfer applications currently being processed for lots in the Bell Country Estates were submitted without sufficient evidence of beneficial use of the water rights within the previous 5 year period or an acceptable defense against forfeiture. Information currently available to the Department indicates the rights associated with this property have not been used as appropriated within the last 5 years. If a transfer application is filed with the Department, information confirming beneficial use or an acceptable defense to forfeiture must be submitted with the application. Failure to submit this information will result in denial of the transfer application.

IDWR forms and other information are available on the Internet at www.idwr.idaho.gov. Please contact me at 208-334-2190 if you have additional questions.

Sincerely,



Angela M. Grimm
Water Resource Agent

Enclosure(s): Distribution List
Bell Country Estates Water Rights table
Application for Transfer of Water Right completed for Lot 8 as example
Bell Country Estates Map
Application for Transfer of Water Right form with instructions

Distribution List

Jeff S. and Goisalde O. Jausoro
3637 N 18th E
Mountain Home, ID 83647

James F. and Tonia D. O'Day
3535 N 18th E
Mountain Home, ID 83647

David B. Vitulski
2611 Sierra Vista Way
Holiday, FL 34691

David B. Vitulski
11680 E Highway 20
Mountain Home, ID 83647

John Sullivan and Narda P. Davis
3211 N 18th E
Mountain Home, ID 83647

Michael P. Arnold
2250 NE Bell Country Court
Mountain Home, ID 83647

Dennis D. and Karen M. Crossley
2170 NE Bell Country Court
Mountain Home, ID 83647

Michael F. and Nichole C. Cruser
2185 NE Bell Country Court
Mountain Home, ID 83647

Alan D. and Sue L. Roberts
c/o Larry C. Ashcraft
Ashcraft & Miller, P.L.L.C.
P.O. Box 506
Mountain Home, ID 83647

Michael J. Contreras
2303 NE Bell Country Estates
Mountain Home, ID 83647

Donna L Bell Trust
Ralph Robert Towle Trustee
2405 Wyoming
Boise, ID 83706

Bell Country Estates Water Rights

Lot	1	2	3	4	5	6 + 7	8	9	10	W/held by Initial Deeds
61-2127: Acres	2.9	2.9	2.9	2.3	2.8	6.2	3.1	2.8	3.0	3.1
Flow (cfs)	0.06	0.06	0.06	0.05	0.06	0.12	0.06	0.06	0.06	0.06
Volume (AFA)	10.4	10.4	10.4	8.2	10.1	22.3	11.1	10.1	10.8	11.1
61-4136: Acres	1.8	1.8	1.8	1.4	1.8	3.9	1.9	1.8	1.9	1.9
Flow (cfs)	0.03	0.03	0.03	0.02	0.03	0.06	0.03	0.03	0.03	0.03
Volume (AFA)	7.2	7.2	7.2	5.6	7.2	15.6	7.6	7.2	7.6	7.6
Combo Limit: Acres	4.7	4.7	4.7	3.7	4.6	10.1	5.0	4.6	4.9	5.0
Flow (cfs)	0.07	0.07	0.07	0.05	0.07	0.14	0.07	0.07	0.07	0.07
Volume (AFA)	10.4	10.4	10.4	8.2	10.2	22.3	11.1	10.2	10.8	11.1
Total Acre PPU	5.1	5.1	5.1	4.0	5.0	11.3	5.4	5.0	5.3	N/A

Page _____ of _____

DRAFT

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

Transfer No. _____

APPLICATION FOR TRANSFER OF WATER RIGHT PART 1

Name of Applicant LOT OWNER NAME Phone #Mailing address ADDRESS CITY, STATE ZIP Email _____**A. PURPOSE OF TRANSFER**

1. ☐ Change point of diversion ☒ Add diversion point(s) ☐ Change place of use
☐ Change nature of use ☐ Change period of use ☐ Other _____

2. Describe the reason for the proposed changes SPLIT WATER RIGHTS, CHANGE OWNERSHIP FOR APPLICANTS' PORTION OF RIGHTS, AND ADD A POINT OF DIVERSION FOR IRRIGATION OF LOT 8 BELL COUNTRY ESTATES.

B. DESCRIPTION OF RIGHT(S) OR PORTION THEREOF, AFTER THE REQUESTED CHANGE

1. Right Number	Priority	Amount (cfs/ac-ft)	Nature of Use	Period of Use
<u>CURRENT #</u>	<u>12/28/1959</u>	<u>0.06 cfs/11.1 AF</u>	<u>IRRIGATION</u>	<u>4/01</u> to <u>10/31</u>
<u>CURRENT #</u>	<u>4/01/1975</u>	<u>0.03 cfs/7.6 AF</u>	<u>IRRIGATION</u>	<u>3/15</u> to <u>11/15</u>

2. Total amount of water being transferred 0.07 cubic feet per second and/or 11.1 acre-feet per annum.

3. Source of water GROUND WATER tributary to N/A

4. Point(s) of Diversion:

Lot	1/4	1/4	1/4	Sec	Twp	Rge	County	Local name for diversion
		NE	SE	13	03S	06E	ELMORE	WELL TAG # D00466216 LOT 8 BELL COUNTRY ESTATES

5. Lands irrigated or place of use:

Twp	Rge	Sec	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
03S	06E	13																	5.4

Total Acres 5.0 AC W/IN 5.4 AC

PART 1

6. General Information:

a. Description of diversion system WELL TAG # D0046026, ELECTRIC PUMP, AND SPRINKLERSb. Are the lands from which you propose to transfer the water right subject to any liens, deeds of trust, mortgages, or contracts?
_____ Yes ☒ No. If yes, provide a notarized statement from the holder of the lien, deed of trust, mortgage or contract agreeing to the proposed changes.

c. Describe the affect on the land now irrigated if the place of use is changed pursuant to this transfer:

NONE

d. Remarks:

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Transfer of Water Rights No. _____

And the said application is hereby _____, subject to the following conditions:

Witness my hand this _____ day of _____, 20_____.

For the Director

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR TRANSFER OF WATER RIGHT
PART 2

(Attach one copy for each right)

A. DESCRIPTION OF RIGHT AS RECORDED

ATTACHMENT A ←

1. Right as evidenced by:

- a. Decree No. _____ Decreed to _____
in case of _____ vs. _____
dated _____ in _____ county of _____
- b. License No. _____ issued by the Idaho Department of Water Resources.
- c. Claim No. _____ on file with the Idaho Department of Water Resources.
- d. Transfer No. _____ which produced this right.

2. Attach copy of last year's tax notice for the property to which the water right is appurtenant or other documents which show ownership. Label document as attachment A. Check appropriate box below:

☐ Tax Notice☒ Warranty Deed
ATTACHMENT C☐ Other _____

3. Source of water _____ tributary to _____

4. Date or priority _____

5. Water is used for the following purposes:

amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)

amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)

amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)

6. Total amount of water under right _____ cubic feet per second and/or _____ acre-feet per annum.

7. Point(s) of Diversion:

Lot	1/4	1/4	1/4	Sec	Twp	Rge	County	Local name for diversion

8. Lands irrigated or place of use:

Twp	Rge	Sec	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	

Total Acres _____

9. Describe any other water rights used for the same purpose as described above CURRENT WR # (WITH PRIORITY

DATE 4/01/1975) COMBINED SYSTEM

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR TRANSFER OF WATER RIGHT
PART 2

(Attach one copy for each right)

A. DESCRIPTION OF RIGHT AS RECORDED

ATTACHMENT B ←

1. Right as evidenced by:

- a. Decree No. _____ Decreed to _____
in case of _____ vs. _____
dated _____ in _____ county of _____
- b. License No. _____ issued by the Idaho Department of Water Resources.
- c. Claim No. _____ on file with the Idaho Department of Water Resources.
- d. Transfer No. _____ which produced this right.

2. Attach copy of last year's tax notice for the property to which the water right is appurtenant or other documents which show ownership. Label document as attachment A. Check appropriate box below:

☐ Tax Notice☒ Warranty Deed☐ Other _____

ATTACHMENT C

3. Source of water _____ tributary to _____

4. Date or priority _____

5. Water is used for the following purposes:

amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)

amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)

amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)

6. Total amount of water under right _____ cubic feet per second and/or _____ acre-feet per annum.

7. Point(s) of Diversion:

Lot	1/4	1/4	1/4	Sec	Twp	Rge	County	Local name for diversion

8. Lands irrigated or place of use:

Twp	Rge	Sec	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	

Total Acres _____

9. Describe any other water rights used for the same purpose as described above

CURRENT WR # (WITH PRIORITY DATE 12/28/1959) COMBINED SYSTEM

10. To your knowledge, has any portion of this water right undergone a period of five or more consecutive years of non-use?

If yes, describe ANSWER AS APPROPRIATE

(If the entire right is to be changed by the applicant, omit part B and C.)

1. amount 0.03 cfs/7.6 AF for IRRIGATION purposes from 3/15 to 11/15
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)

- [illegible]

- [illegible]

Total Acres 1.9

e) BALANCE OF RIGHT

1. amount _____ for _____ purposes from BALANCE OF RIGHT to _____
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)

- [illegible]

- [illegible]

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR TRANSFER OF WATER RIGHT
PART 3

A. Draw a map or attach a USGS map indicating the new point(s) of diversion and/or the new place of use for the rights described in part 1. Clearly depict the land by section, township and range number.

ATTACHMENT D OR REPLACE THIS
SHEET WITH MAP

Scale: 2 inches equal 1 mile. Draw plan in ink.

PART 3**B. CHANGES IN NATURE OF USE** *N/A*

- | 1. | <u>New Nature of Use</u> | <u>Amount(cfs/af-ft)</u> | <u>Hours/days/year</u> | <u>Period of Use</u> |
|----|--------------------------|--------------------------|------------------------|----------------------|
| | _____ | _____ | _____ | _____ to _____ |
| | _____ | _____ | _____ | _____ to _____ |
2. Quantity and quality of return flows and location of discharge: _____

3. Describe effects on other water uses resulting from the proposed change: _____

I hereby assert that no one will be injured by such change and that the change does not constitute an enlargement in use of the original right. The information contained in this application is true to the best of my knowledge.

I understand that any willful misrepresentations made in this application may result in voiding its approval.

(Signature of Applicant)_____
Print Name (and title, if applicable)

Subscribed and sworn to before me this _____ day of _____, 20_____.

(Notary Public)

My commission expires _____

FOR DEPARTMENT USE ONLY

Transfer contains _____ pages and _____ attachments

Received by _____ Date _____ Protest filed by _____

Prelim. Check by _____ Fee _____

Receipted by _____ Date _____

Published in _____ Copies of protest forwarded by _____

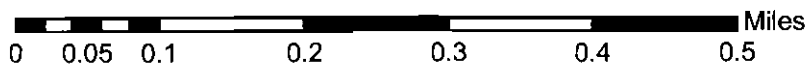
Pub. Dates _____ Hearing held by _____ Date _____

Watermaster recommendations requested on _____ Recommended for ☐ approval ☐ denial

_____ received _____ by _____

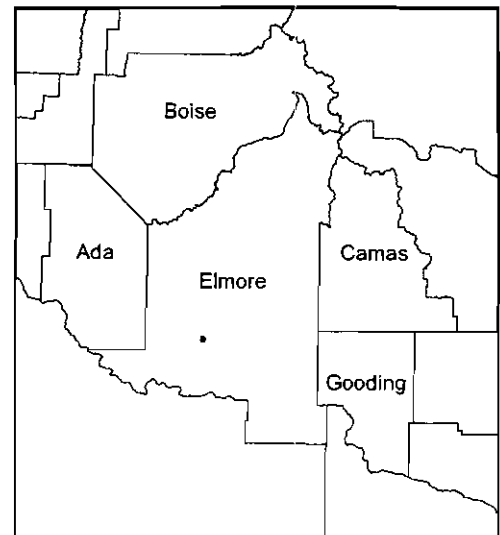
Copy of transfer sent to lien holder _____

B II Country Estates



Legend

- | | |
|-------------------------|----------------|
| Elmore Co Taxlots | Township/Range |
| 61-2127 & 61-4136 POU | Sections |
| ● 61-2127 & 61-4136 POD | ● QQ |
| ● Lot 6 & 7 POD | |



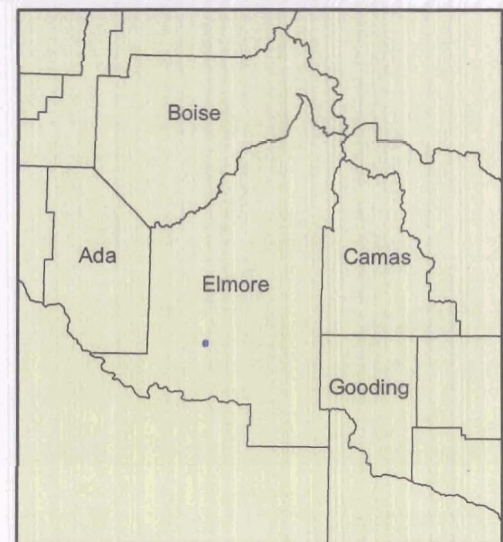
B II Country Estates



0 0.05 0.1 0.2 0.3 0.4 0.5 Miles

Legend

- | | |
|-------------------------|----------------|
| Elmore Co Taxlots | Township/Range |
| 61-2127 & 61-4136 POU | Sections |
| ● 61-2127 & 61-4136 POD | QQ |
| ● Lot 6 & 7 POD | |





State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way • Boise, Idaho 83705-5082

Phone: (208) 334-2190 • Fax: (208) 334-2348 • Web Site: www.idwr.idaho.gov

C. L. "BUTCH" OTTER
Governor

DAVID R. TUTHILL, JR.
Director

July 1, 2008

Alan D. and Sue L. Roberts
205 South 14th East
Mountain Home, ID 83647

COPY

Re: Processing of Application for Transfer No. 73844

Dear Alan and Sue:

This office received your letter on June 25, 2008 requesting a six (6) month delay in processing of the above referenced transfer application. Based on this request, the Department will hold processing of your application until **December 25, 2008**, pending any requests you may submit for action(s) prior to that date.

More information about water rights and other matters administered by IDWR is available on the Internet at www.idwr.idaho.gov. Please contact me at 208-334-2190 if you have any questions.

Sincerely,

Angela M. Grimm
Water Resource Agent

Commercial

Residential



QUALITY ENGINEERED ROOF STRUCTURES

1640 Sunset Strip • Mountain Home, ID 83647

Office: (208) 587-9396 • Fax: (208) 587-2970

7-1-08

334-2348 FAX

DEPT. WATER RESOURCES

ATTN: ANGIE GRIMM

Re: Application 73844

PLEASE CHANGE MAILING ADDRESS ON OUR APPLICATION FROM
OUR LAWYERS OFFICE TO MY PERSONAL ADDRESS OF:

ALAN & SUE ROBERTS

205 So. 14th EA

Mtn. Home IDAHO 83647

Thank you.

Alan

June 23rd, 2008

Dept of Water Resources
Attn: Angela Grimm

RECEIVED

JUN 25 2008

**WATER RESOURCES
WESTERN REGION**

Re: Application for Transfer No 73844

Due to the problems that have arisen with our application at this time I would like to put a hold on the process until we have had time to clarify the problem and find a satisfactory solution. I understand that this is good for up to 6 months. I will look forward to your package explaining our options concerning this application. Thank you.

Alan and Sue Roberts
205 South 14th East
Mountain Home Idaho 83647

208-587-9396

A handwritten signature in black ink, appearing to read "Alan Roberts", with a stylized flourish at the end.



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way • Boise, Idaho 83705-5082

Phone: (208) 334-2190 • Fax: (208) 334-2348 • Web Site: www.idwr.idaho.gov

May 27, 2008

C. L. "BUTCH" OTTER
Governor

DAVID R. TUTHILL, JR.
Director

Alan D. Roberts and Sue L. Roberts
c/o Larry C. Ashcraft
Ashcraft & Miller P.L.L.C.
P.O. Box 506
Mountain Home, ID 83647-0506

COPY

Re: Application for Transfer No. 73844

Dear Applicant:

The Idaho Department of Water Resources (IDWR) is currently reviewing the above referenced application for transfer to change water rights. After preliminary review of the application, some concerns were identified regarding forfeiture issues of the rights proposed for change. The transfer application would be denied if processed as filed due to these concerns.

Forfeiture is a concern because 2004 and 2006 aerial photography indicate the place of use for these water rights has not been irrigated. Proof that your portion of the place of use was irrigated, in accordance with the water rights, sometime during the irrigation seasons from 2002 up to the date the application was filed in 2007 is necessary to avoid denial of this application. Alternatively, an acceptable defense against forfeiture, in accordance with I.C. § 42-223 or otherwise, may be submitted to avoid forfeiture.

You may wish to withdraw your application or amend it with an alternate proposal that will avoid denial based on forfeiture. IDWR will hold further processing of your application to allow a withdrawal or amendment of the application or any other information you may wish to submit in support of your existing or amended proposal.

Please submit the requested information for application processing to continue. You may seek additional time to provide the information by making a written request to delay processing. Your written response including the requested information, or a request for more time to seek the information, must be received within sixty (60) days of the date of this letter.

Without a timely reply, IDWR will issue a preliminary order to deny the application. The application fee will not be refunded for a denied application. A denied application cannot generally be re-filed for substantially the same proposal.

IDWR forms and other information are available on the Internet at www.idwr.idaho.gov. Please contact me at 208-334-2190 if you have any questions. Thank you for your attention to this matter.

Sincerely,

Angela M. Grimm
Water Resource Agent

ASHCRAFT AND MILLER, P.L.L.C.

ATTORNEYS AND COUNSELORS AT LAW
430 North 6th East
Post Office Box 506
Mountain Home, Idaho 83647-0506

Telephone: (208) 587-9797
Facsimile: (208) 587-7005
E-mail: amlaw@qwestoffice.net

Attorneys
Larry C. Ashcraft
Philip R. Miller

Paralegal
Geri L. Brennan

RECEIVED

MAY 12 2008

WATER RESOURCES
WESTERN REGION

Legal Assistant
Dolores A. Barinaga

Legal Secretary
Grace M. Brown

May 9, 2008

IDWR/Western Region
ATTN: Vicky Music
Sr. Water Resource Agent
2735 Airport Way
Boise, ID 83705-5082

Re: Application for Transfer of Water Right
Notice of Change in Water Right Ownership
Alan D. and Sue L. Roberts

Dear Ms. Music:

Enclosed herewith please find the executed transfer signature page and my clients' check in the amount of \$125.00 to upgrade the well drilling permit. Should you have any questions, please do not hesitate to call.

Sincerely,

ASHCRAFT AND MILLER, PLLC

*Dictated and mailed without signature
in his absence to avoid delay.*

Larry C. Ashcraft

LCA/dab
cc: Clients
Enclosures



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082

PHONE: (208) 334-2190 FAX: (208) 334-2348 www.idwr.idaho.gov

April 28, 2008

C.L. "BUTCH" OTTER, Governor
DAVID R. TUTHILL, JR., Director

Larry C. Ashcraft
ASHCRAFT & MILLER, P.L.L.C.
P.O. Box 506
Mountain Home, ID 83647-0506

Re: Application for Transfer of Water Right
Applicants Alan and Sue Roberts

Dear Mr. Ashcraft:

In June of 2007, you filed an Application for Transfer of Water Right on behalf of Alan and Sue Roberts. A water right is a property right and any changes to the water right must be authorized by all property owners. The application is in the names of Alan and Sue and the deed you submitted with the application lists Alan and Sue as the property owners. Sue, however, did not sign the application.

Please have Sue sign the transfer signature page enclosed here and return it to my attention at IDWR. Her signature must be notarized.

Lastly, IDWR records indicate that the Roberts' well was February 28, 2007, under a \$75 domestic well drilling permit. The well drilling fee for an irrigation well is \$200 instead of \$75. IDWR must collect the unpaid balance of \$125 for a well drilled under those circumstances.

Please remit \$125 to upgrade the well drilling permit within the next thirty days to facilitate processing of the Roberts' transfer application.

Please contact me at 208-334-2190 if you need more information. Thank you for your attention to these matters.

Sincerely,


Vicky Music
Sr. Water Resource Agent
IDWR/ Western Region

Enclosure: Application for Transfer of Water Right signature page

ASHCRAFT AND MILLER, P.L.L.C.

ATTORNEYS AND COUNSELORS AT LAW

430 North 6th East
Post Office Box 506
Mountain Home, Idaho 83647-0506

Telephone: (208) 587-9797
Facsimile: (208) 587-7005
E-mail: amlaw@qwestoffice.net

Attorneys
Larry C. Ashcraft
Philip R. Miller

Paralegal
Geri L. Brennan

Legal Assistant
Dolores A. Barinaga

Legal Secretary
Tammy A. Mallea

June 14, 2007

RECEIVED
JUN 15 2007

WATER RESOURCES
WESTERN REGION

IDWR Western Region
2735 Airport Way
Boise, ID 83705-5082

Re: Application for Transfer of Water Right
Notice of Change in Water Right Ownership
Alan D. and Sue L. Roberts

Greetings:

Enclosed please find the forms and attachments necessary to change the ownership of a portion of Water Rights 61-12064 and 61-12066 from Donna L. Bell Trust to Alan D. and Sue L. Roberts, and then to transfer those water rights to a new point of diversion. Following my telephone conversation with an employee of your department, I have included our firm's check in the amount of \$100 for the filing fee.

Please contact me as soon as possible if you need further information. Otherwise, I will await receipt of the transferred and split water rights.

Sincerely,

ASHCRAFT and MILLER, P.L.L.C.



Larry C. Ashcraft

LCA:glb
cc: Clients
Enclosures