



MAR 03 2006
DEPARTMENT OF
WATER RESOURCES

March 2, 2006

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Jeff Peppersack
Idaho Department of Water Resources
1301 North Orchard Street
P.O. Box 83720
Boise, ID 83720-0098

Re: Water Right No. 63-31194

Dear Mr. Peppersack,

I am writing on behalf of my client, L. Darwin McKay. This letter is submitted in response to your letter to me dated February 15, 2006 regarding Water Right No. 63-31194. Again, I would like to reiterate that the Department's intention to change the record for water right 63-31194 to show Sundance as the current owner is inconsistent with your November 5, 2004 letter to Richard W. Jankowski discussing this very issue. Furthermore, your statement that "McKay has not provided any evidence that would contradict the evidence submitted by Sundance" fails to recognize the entire water right file and good case law provided in my previous letter.

The water right file contains the water right application noting that the water right application was made in the lessee's name not the land owner's name. At the time of filing the application Mr. McKay leased the land in question knowing that he would transfer the water right after the lease was terminated. The file also contains a statement from Mr. Jack Miller, acting on behalf of the land owner, confirming that the land owner has no interest in the water right. While the Department has never requested Mr. McKay to submit evidence of ownership, the file speaks for itself. Additionally, Mr. McKay never discussed transferring the water right with the land transfer nor did not receive or expect any compensation for the water right. Simply put, Mr. McKay never intended on transferring the water right to Sundance.

In my previous letter to you, I provided you with current case law stating that the intent of the water right owner, not the mere existence of boiler plate language on a deed, is dispositive when determining if water right ownership transferred. Mr. McKay has provided the Department with more than ample evidence of ownership.

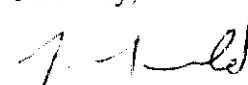
Because Mr. McKay has provided sufficient evidence of ownership coupled with the fact that "the Department does not adjudicate or quiet title to establish ownership of water rights", the Department should maintain the status quo, as it previously represented in writing it would do, and

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continue to list Mr. McKay as the owner while an ownership controversy exists.

A Notice of Claim has been filed with the district court. That court will quiet title in the proper party. Because more than one party claims ownership and because the parties have provided evidence supporting their claims, the Department should not proactively change the ownership listing. If, however, the Department intends to resolve the ownership issue, a formal request for evidence should be made to the interested parties prior to such action. Because this is a contested matter, any Department decision to change the listed owner of this water right should include a findings of fact and conclusions of law supporting such a change. Thank you.

Sincerely,



Jon Gould

cc: L. Darwin McKay