



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street, P.O. Box 83720, Boise, ID 83720-0098

Phone: (208) 287-4800 Fax: (208) 287-6700 Web Site: www.idwr.idaho.gov

February 15, 2006

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

JON GOULD
RINGERT CLARK CHARTERED LAWYERS
PO BOX 2773
BOISE ID 83701

RE: Change of Ownership for Water Right 63-31194

Dear Mr. Gould:

I have received your letter of February 10, 2006, regarding the change of ownership for the water right referenced above. This letter is a response to the questions that you submitted on behalf of your client, Darwin McKay.

My letter of November 5, 2004, addressed to Richard Jankowski, stated that "... if the deed does not specify the conveyance of any particular water rights, the ownership of water right 63-31194 would not be clarified by submittal of the deed in this case." At the time, I anticipated that Darwin McKay (McKay) and Sundance Investments Limited Partnership (Sundance) would attempt to resolve the dispute and submit documentation to IDWR clarifying the ownership of the water right. Clearly, the issue has not been resolved between Sundance and McKay. However, IDWR must update the water right record if the evidence of ownership appears to be sufficient.

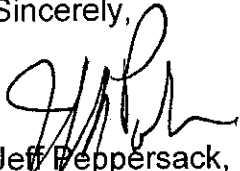
The deeds submitted with the Sundance transfer application convey the land with appurtenances from McKay to Sundance. The conveyance does not exclude water rights and is not ambiguous. It is IDWR's understanding that water right permits developed on a specific place of use become appurtenant to the place of use upon completion of beneficial use of the water as verified by IDWR through the licensing process. There may be exceptions, such as development of the water right by a canal company or other delivery entity, or through an agreement between a lessor and a lessee to clarify ownership of a water right developed by the lessee. McKay has not submitted any documentation that would support ownership of the water right separate from the land.

My reference to the license issued on February 1, 2000 is correct. The license issued in 2000 superseded the license issued on August 23, 1995. Both versions included the condition noted in my letter of November 5. I have included a copy of the 2000 license for your future reference.

For the reasons stated above, the deeds submitted by Sundance are considered sufficient evidence of ownership to update the water right record and proceed with processing the transfer application in the name of Sundance. McKay has not provided any evidence that would contradict the evidence submitted by Sundance. Further delay in processing the transfer is not justified simply based on a claim of ownership by McKay without sufficient evidence of ownership. As stated in my earlier letter, the Department does not adjudicate or quiet title to establish ownership of water rights. Although McKay may have a legal claim to ownership of the water right, resolution of the issue must be through the court process.

Please feel free to contact me at 208-287-4948 if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'JP', is written over the printed name 'Jeff Peppersack'.

Jeff Peppersack, Manager
Water Right Permits Section

JP:klt

c: William J. McKlveen
Dan Nelson – IDWR Western

Enclosure – 2000 license for 63-10666