



State of Idaho

DEPARTMENT OF WATER RESOURCES

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DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

February 9, 2006

WILLIAM J MC KLVEEN
EBERLE BERLIN KADING TURNBOW MC KLVEEN & JONES CHARTERED
PO BOX 1368
BOISE ID 83701

RE: Application for Transfer of Water Right 63-31194 in the Name of Sundance Investments Limited Partnership

Dear Mr. McKlveen:

I was recently forwarded your letter of January 11, 2006, addressed to Dan Nelson of this Department, regarding the application referenced above. The purpose of this letter is to inform you of the Department's intentions regarding the application and the Notice of Change in Water Right Ownership filed for water right 63-31194 by Sundance in 2003.

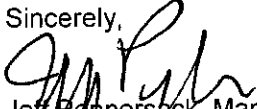
As you know, the ownership change for water right 63-31194 is disputed by Darwin McKay. Mr. McKay disputes the change on the basis that he developed the water right separate from the land as a lessee of the land. The Department did not change the water right record to show Sundance as the owner because the Purchase and Sale Agreement submitted with the ownership change notice was not conclusive regarding the final disposition of the water right (i.e. conveyance deeds were not included in the documentation).

Upon licensing of the original water right to Mr. McKay (license 63-10666) the water right was considered appurtenant to the land. The license issued on Feb. 1, 2000 included a condition stating that, "This water right is appurtenant to the described place of use." Sundance's application for transfer included quitclaim and warranty deeds from Darwin McKay and The Turf Corp. for the land and appurtenances to Sundance. Given that all appurtenances were conveyed, and Mr. McKay has not submitted any prior lease agreement indicating that any water right developed during the lease term would not be appurtenant to the land, the Department now intends to change the record for water right 63-31194 to show Sundance as the current owner.

Please note that the Department does not adjudicate or quiet title to establish ownership of water rights. That is the role of the courts. The Department's decision to process the ownership change in its records does not determine or extinguish any existing ownership claims. Mr. McKay may still seek relief from court. In addition, Mr. McKay may protest Sundance's pending transfer application for the water right.

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

Sincerely,


Jeff Peppersack, Manager
Water Right Permits Section

JP:klt

cc: Jon Gould – Ringert Clark, attorney for Darwin McKay
Dan Nelson – IDWR Western