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RECEIVED

JAN 12 2006

WATER RESOURCES
WESTERN REGION

January 11, 2006

Daniel A. Nelson
Sr. Water Right Agent
Idaho Department of Water Resources
2735 Airport Way
Boise, Idaho 83705

Re: *Application for Transfer Water Right 63-31194*
Sundance Company
EBKTM&J File No. 79010-1

Dear Mr. Nelson:

This firm represents the interests of Sundance Investment LTD Partnership with respect to the above-referenced matter. I am writing in response to your letter, dated December 30, 2005, to my client (a copy of which is enclosed for your reference). In your letter you state that the "review of the transfer revealed some issues with the ownership of the water right being transferred" and as a result the transfer has been put on an indefinite hold. Finally, you asked my client provide to you with an update on the efforts to clarify the ownership issue.

I wish to make it clear that my client fully intends on securing the transfer of ownership of water right 63-31194 (hereinafter the "Water Right"). In fact, in June 2003, my client filed the Notice of Change in Water Right Ownership with IDWR. Along with that Notice, my client provided IDWR signed copies of the Purchase and Sale Agreement with respect to the property upon which the Water Right is appurtenant. Thereafter, my client provided IDWR copies of warranty deeds and quitclaim deeds executed by L. Darwin McKay, the former owner of the Water Right, in favor of my client. Those deeds specifically quitclaim whatever interest Mr. McKay had in the property, including appurtenances. In short, my client has done everything required by Idaho Code and the relevant IDWR rules and regulations to accomplish this transfer.

In light of the above, IDWR has a ministerial duty to name my client as the owner of the Water Right. By refusing this ministerial act, you are quasi-judicially stripping my client of its interest in the Water Right without notice or an opportunity to be heard in the matter. If IDWR has statutory or regulatory authority for refusing to honor my client's Notice of Change in Water Right Ownership, I ask that you inform me in writing as to what that authority is.

To resolve any doubt, I am enclosing the following documents for your consideration:

- A copy of the Purchase and Sale Agreement with respect to the real property upon which the Water Right is appurtenant. Please note that the agreement specifically includes "water and water rights appurtenant to or used on the Property and all shares, certificates, and other documents evidencing such water rights."
- A copy of the Action by Co-Tenants, whereby all co-tenants of the property which is the subject of the Purchase and Sale Agreement consented to the sale of the co-tenants' interests in real and personal property pursuant to the terms of the Purchase and Sale Agreement. Please note L. Darwin McKay's signature on the Action by Co-Tenants.
- A copy of the Warranty Deeds executed by L. Darwin McKay in favor of The Turf Company with respect to the property.
- A copy of the Quitclaim Deeds executed by L. Darwin McKay in favor of The Turf Company with respect to the property.
- A copy of the Warranty Deeds executed by The Turf Company in favor of my client with respect to the property.
- A copy of the Quitclaim Deeds executed by The Turf Company in favor of my client with respect to the property.
- A copy of the Quitclaim Deeds executed by L. Darwin McKay and Patricia E. McKay in favor of my client with respect to the property.

Idaho law is clear and specifically provides that a deed to real property that includes the provision "together with appurtenances" operates to convey the real property AND the water rights appurtenant to the property at the time of the conveyance, unless the water right is "specifically reserved in the deed or it could be clearly shown that it was known to BOTH parties that the water right was not intended to be conveyed," *Russell v. Irish*, 20 Idaho 194, 118 P. 501 (1911) (emphasis added); see also *Koon v. Empey*, 40 Idaho 6, 231 P. 1097 (1924). Additionally,

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in *Paddock v. Clark*, 22 Idaho 498, 126 P. 1053 (1912), the Idaho Supreme Court held that a deed which specifically mentions certain water rights conveys the land and those mentioned water rights, to the exclusion of any other water rights, regardless of whether there is the usual appurtenances clause in the deed.

With respect to the above-referenced deeds, please note that each and every one of the deeds contain the provision "together with their appurtenances." None of the deeds specifically describe any water right to the exclusion of any other water right, and none of the deeds specifically exclude any water right whatsoever. Moreover, there is nothing in the Purchase and Sale Agreement or the Action by Co-Tenants which indicates any intention on Mr. McKay's part to exclude the Water Right from the sale.

I trust that this information will serve to resolve any of IDWR's perceived disputes regarding proper ownership of the Water Right and that you will forthwith cause any documentation of Mr. McKay's claim to the Water Right to be purged from the record.

Very Truly Yours



William J. McKlveen

WJM/nb

Enclosure

cc (w/encl.): Roger L. Anderson
00126832.000.DOC



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190

FAX (208) 334-2348

JAN 04 2006

December 30, 2005

DIRK KEMPTHORNE
GovernorKARL J. DREHER
DirectorSUNDANCE INVESTMENT LTD PARTNERSHIP
9100 W BLACKEAGLE DR
BOISE ID 83709***RE: APPLICATION FOR TRANSFER WATER RIGHT 63-31194***

Ladies and Gentlemen:

In May of 2004, your organization filed a transfer on water right 63-31194. The review of the transfer revealed some issues with the ownership of the water right being transferred. It is our understanding that those issues have yet to be resolved at this time. Processing of this transfer has been delayed and the transfer has been put on an indefinite hold until the ownership issues could be resolved.

The purpose of this letter is to determine if you are still interested in pursuing this transfer. If you are no longer interested in the transfer, then I would like to ask if you could send us a request to withdraw the transfer. If you are still interested in the transfer, we would appreciate a brief update on your efforts to clarify the ownership issues?

If you have any questions or concerns please contact me at the above address.

Respectfully,

Daniel A. Nelson
Sr. Water Right Agent