



State of Idaho

DEPARTMENT OF WATER RESOURCES

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SOUTHERN REGION

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

December 8, 2005

Daren Nelson
Brockway Engineering
2016 N Washington Street
Suite 4
Twin Falls, ID 83301

Dear Mr. Nelson:

As you recall you submitted a water right transfer application in the name of Rick and Sharon Hawker on August 2nd to our office. The application proposed transferring supplemental irrigation water rights, 45-2444B and 45-11164, to primary uses associated with a feedlot operation northwest of Oakley. The Department is still reviewing and considering the proposed application, but has discovered an ownership issue that needs to be resolved before the Department can continue processing the application.

The application included a copy of an addendum to a purchase and sales agreement (dated December, 1999) as evidence that Dennis Smith retained ownership of the water rights during a sale of land to Pickett Ranch & Sheep Company. On September 29th, Don Pickett of Pickett Ranch & Sheep Company dropped off a packet of information (copy enclosed), relating to the rights involved with the Hawker transfer application. The information included an affidavit and a copy of the warranty deed conveying part of the original Smith property to Pickett Ranch & Sheep Company in February of 2000. Of particular concern, is the fact that the rights, 45-2444B and 45-11164, involved with the Hawker transfer are not specifically excluded in the warranty deed from Smith to Pickett Ranch & Sheep Company. Therefore, it appears that Smith conveyed a significant portion of the rights he is trying to now sell to Hawkers to Pickett Ranch & Sheep Company in February of 2000.

Staff in our state office, have discussed this matter with one of the Department's Deputy Attorney Generals, and have concluded that the deed is the conveyance document that the Department should be looking at to confirm ownership. The deed is the conveyance document that pulls any other agreements and understandings together into a final document. If the deed is contested, the purchase agreement might be used by a court to reconstruct the complete transaction, but there may be other agreements or understandings that led to the execution of the deed. That's why a deed is used to convey property; to remove all doubt about what was finally agreed to and ultimately conveyed.

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In the affidavit, Don Pickett appears to be raising the ownership issue (see item 4). If the deed is disputed, it is not the Department's place to interpret the intent of the conveyance; that is an issue for a court to decide.

In summary, the Department cannot process the Hawker transfer until the ownership of rights 45-2444B and 45-11164 is resolved between the parties (Dennis Smith and Pickett Ranch & Sheep Company). If you have any questions, or if I can be of any assistance, feel free to contact me at your convenience.

Sincerely,

A handwritten signature in black ink, appearing to read "Corey Skinner". The signature is fluid and cursive, with the first name "Corey" written in a larger, more prominent script than the last name "Skinner".

Corey Skinner, PE
Water Resource Engineer

Enclosures

cc: Rick and Sharon Hawker
Pat Brown
Dennis Smith
Don Pickett - Pickett Ranch & Sheep Company