

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF CHANGE OF
OWNERSHIP FOR WATER RIGHT NOS.
67-4115B AND 67-11330

**ORDER DENYING MOTION TO
DESIGNATE APPROVAL IN CHANGE
OF OWNERSHIP AS A FINAL ORDER
AND REQUEST FOR HEARING**

BACKGROUND

On August 16, 2023, Monte and Dayna Eppich (“Eppichs”) filed a *Notice of Change in Water Right Ownership* with the Idaho Department of Water Resources (“Department”) regarding water right nos. 67-4115B and 67-11330.

The Department responded to the Eppichs via letter on August 24, 2023, stating that it “acknowledges the receipt of correspondence changing ownership of the above referenced water right(s) to you. The Department has modified its records and has enclosed a computer-generated report for you.” Letter from Debra Mansfield, Office Specialist II, Idaho Department of Water Resources, to Monte R Eppich & Dayna M Eppich (Aug. 24, 2023) (on file with the Idaho Department of Water Resources).

On September 8, 2023, Jeanette Shankle (“Petitioner”) moved the Department to “designate the approval of the change of ownership as a preliminary, recommended or final order, designate a contested case and grant the Petitioner a hearing on the same.” *Motion to Designate Approval in Change of Ownership as a Final Order and Request for Hearing* 3 [hereinafter *Motion*].¹

Petitioner disputes that the Eppichs are the true and lawful owners of the full water rights. *Id.* at 2. Petitioner believes she is “an owner of property to which at least a portion of the water rights are appurtenant.” *Id.*

On September 14, 2023, the Eppichs filed a *Response to Motion to Designate Change of Ownership and Request for Hearing* (“Response”) with the Department. The Eppichs argue that Petitioner’s *Motion* is meritless, contrary to Idaho Code § 42-248(8), and should be denied. *Response* 1–2.

¹ Petitioner refers to water right nos. 76-4115B and 67-11130 in the *Motion*. Upon review, the Department believes this to be a typographical error. The Department believes Petitioner intended to reference water right nos. 67-4115B and 67-11330.

ANALYSIS AND CONCLUSIONS OF LAW

Idaho Code § 42-248(8) provides:

Any action by the department updating the ownership of a water right in the department's records or returning the notice of change of ownership to the person filing the notice is not a determination of water right ownership, is not an administrative action subject to challenge under the Idaho administrative procedure act, chapter 52, title 67, Idaho Code, and is not subject to a request for hearing pursuant to section 42-1701A, Idaho Code. Water right ownership disputes arising from a notice of change of water right ownership under this section must be resolved either in a water rights adjudication or in an action to quiet title pursuant to section 6-401, Idaho Code.

When the Eppichs filed a *Notice of Change in Water Right Ownership* with supporting documentation, the Department updated the ownership of the rights in the Department's records pursuant to its statutory authority. The Department's action does not determine water right ownership, is not an administrative action subject to challenge, and is not subject to a request for hearing. I.C. § 42-248(8). Therefore, Petitioner is not entitled to a hearing. Any dispute Petitioner has regarding the ownership of the water rights arising from the Eppichs' notice of change in ownership must be resolved either in an adjudication or a quiet title action, not before the Department.

ORDER

IT IS HEREBY ORDERED that Petitioner's *Motion to Designate Approval in Change of Ownership as a Final Order and Request for Hearing* is DENIED.

DATED this 19th day of September 2023.



NICK MILLER
Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 19th day of September 2023, the above and foregoing was served by the method indicated below, and addressed to the following:

Chris M. Bromley Candice M. McHugh MCHUGH BROMLEY, PLLC 380 S. 4th St., Ste. 103 Boise, ID 83702 cbromley@mchughbromley.com cmchugh@mchughbromley.com	☒ U.S. Mail, postage prepaid ☒ Email
Michael P. Lawrence Charlie S. Baser Taylor J. Barton GIVENS PURSLEY LLP P.O. Box 2720 Boise, ID 83701 mpl@givenspursley.com csb@givenspursley.com tjb@givenspursley.com	☒ U.S. Mail, postage prepaid ☒ Email



NICK MILLER
Hearing Officer

EXPLANATORY INFORMATION TO ACCOMPANY A PRELIMINARY ORDER

(To be used in connection with actions when a hearing was **not** held)

(Required by Rule of Procedure 730.02)

The accompanying order or approved document is a "**Preliminary Order**" issued by the department pursuant to section 67-5243, Idaho Code. **It can and will become a final order without further action of the Department of Water Resources ("department") unless a party petitions for reconsideration, files an exception and brief, or requests a hearing as further described below:**

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a preliminary order with the department within fourteen (14) days of the service date of this order. **Note: the petition must be received by the department within this fourteen (14) day period.** The department will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Section 67-5243(3) Idaho Code.

EXCEPTIONS AND BRIEFS

Within fourteen (14) days after: (a) the service date of a preliminary order, (b) the service date of a denial of a petition for reconsideration from this preliminary order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this preliminary order, any party may in writing support or take exceptions to any part of a preliminary order and may file briefs in support of the party's position on any issue in the proceeding with the Director. Otherwise, this preliminary order will become a final order of the agency.

REQUEST FOR HEARING

Unless a right to a hearing before the Department or the Water Resource Board is otherwise provided by statute, any person aggrieved by any final decision, determination, order or action of the Director of the Department and who has not previously been afforded an opportunity for a hearing on the matter may request a hearing pursuant to section 42-1701A(3), Idaho Code. A written petition contesting the action of the Director and requesting a hearing shall be filed within fifteen (15) days after receipt of the denial or conditional approval.

ORAL ARGUMENT

If the Director grants a petition to review the preliminary order, the Director shall allow all parties an opportunity to file briefs in support of or taking exceptions to the preliminary order and may schedule oral argument in the matter before issuing a final order. If oral arguments are to be heard, the Director will within a reasonable time period notify each party of the place, date and hour for the argument of the case. Unless the Director orders otherwise, all oral arguments will be heard in Boise, Idaho.

CERTIFICATE OF SERVICE

All exceptions, briefs, requests for oral argument and any other matters filed with the Director in connection with the preliminary order shall be served on all other parties to the proceedings in accordance with IDAPA Rules 37.01.01302 and 37.01.01303 (Rules of Procedure 302 and 303).

FINAL ORDER

The Director will issue a final order within fifty-six (56) days of receipt of the written briefs, oral argument or response to briefs, whichever is later, unless waived by the parties or for good cause shown. The Director may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. The department will serve a copy of the final order on all parties of record.

Section 67-5246(5), Idaho Code, provides as follows:

Unless a different date is stated in a final order, the order is effective fourteen (14) days after its service date if a party has not filed a petition for reconsideration. If a party has filed a petition for reconsideration with the agency head, the final order becomes effective when:

- (a) The petition for reconsideration is disposed of; or
- (b) The petition is deemed denied because the agency head did not dispose of the petition within twenty-one (21) days.

APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, if this preliminary order becomes final, any party aggrieved by the final order or orders previously issued in this case may appeal the final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which:

- i. A hearing was held,
- ii. The final agency action was taken,
- iii. The party seeking review of the order resides, or
- iv. The real property or personal property that was the subject of the agency action is located.

The appeal must be filed within twenty-eight (28) days of this preliminary order becoming final. See section 67-5273, Idaho Code. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.

Miller, Nick

From: Miller, Nick
Sent: Tuesday, September 19, 2023 8:56 AM
To: Chris Bromley (cbromley@mchughbromley.com); Candice McHugh; Michael Lawrence (MPL@givenspursley.com); csb@givenspursley.com; tjb@givenspursley.com
Subject: Order on Motion regarding 67-4115B and 67-11330
Attachments: 091923_OrderMotiontoDesignate.pdf

Please see the attached preliminary order in this matter.

Nick Miller
Manager, IDWR Western Region

SCANNED

SEP 19 2023

RECEIVED

Sep 14, 2023

DEPARTMENT OF
WATER RESOURCES

Michael P. Lawrence, ISB #7288
Charlie S. Baser, ISB #10884
Taylor J Barton, ISB #11259
GIVENS PURSLEY LLP
601 W. Bannock St.
P.O. Box 2720
Boise, Idaho 83701-2720
Telephone: 208-388-1200
Fax: 208-388-1300
mpl@givenspursley.com
csb@givenspursley.com
tjb@givenspursley.com
Attorneys for Dayna and Monte Eppich

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF CHANGE OF
OWNERSHIP FOR WATER RIGHT NOS.
67-4115B AND 67-11130

**RESPONSE TO MOTION TO
DESIGNATE CHANGE OF
OWNERSHIP AND REQUEST FOR
HEARING**

Dayna and Monte Eppich ("Eppichs"), by and through their counsel Givens Pursley LLP, and pursuant to Rule 220.02.b of the Idaho Department of Water Resources ("IDWR") Rules of Procedure, IDAPA 37.01.01.220.02.b, hereby respond to the *Motion to Designate Approval in Change of Ownership as a Final Order and Request for Hearing*, filed by Jeanette Shankle ("Shankle") and dated September 8, 2023 ("*Motion to Designate*"). Shankle's *Motion to Designate* is without merit and should be denied.

Denial of the *Motion to Designate* is required by Idaho Code § 42-248(8), which states:

Any action by the department updating the ownership of a water right in the department's records or returning the notice of change of ownership to the person filing the notice is not a determination of water right ownership, is not an administrative action subject to challenge under the Idaho administrative procedure act, chapter 52, title 67, Idaho Code, and is not subject to a request for hearing pursuant to section 42-1701A, Idaho Code. Water right ownership disputes arising from a notice of change of water right ownership under this section must be

resolved either in a water rights adjudication or in an action to quiet title pursuant to section 6-401, Idaho Code.

(Emphasis added). It could not be any clearer that IDWR's updating of its ownership records to reflect Eppichs' ownership of water right nos. 67-4115B and 67-11130¹ is not a determination of water right ownership, is not an administrative action subject to challenge under the Idaho Administrative Procedure Act, and is not subject to a hearing under I.C. § 42-1701A.

Shankle contends that IDWR's "approval of the change of ownership determines legal rights, duties, [and] privileges." *Motion to Designate* at 2. This is clearly contrary to the statute's language stating that "[a]ny action by the department updating the ownership of a water right in the department's records . . . is not a determination of water right ownership." I.C. § 42-248(8). Put another way, IDWR's updating of its ownership records is not an "order" as Shankle alleges, and cannot be properly designated as recommended, preliminary, or final as Shankle requests.

Shankle also requests that IDWR institute a contested case and hold a hearing pursuant to Idaho Code Section 42-1701A. Again, this request is clearly contrary to the express language in Section 42-248(8) (*i.e.*, that updating IDWR's ownership records "is not subject to a request for hearing pursuant to section 42-1701A, Idaho Code") and must be denied.

Shankle disputes that the Eppichs are the rightful owners of water right nos. 67-4115B and 67-11130. *Motion to Designate* at 2. However, as the statute makes clear, a water right ownership dispute "arising from a notice of change of water right ownership . . . must be resolved either in a water rights adjudication or in an action to quiet title pursuant to section 6-402, Idaho Code." I.C. § 42-248(8). In other words, IDWR is not the proper venue for Shankle to challenge Eppichs' ownership of the water rights.

¹ Copies of Eppichs' Notice of Change in Water Right Ownership and related documents in IDWR's files are attached hereto as Exhibit A.

In conclusion, Eppichs respectfully request that Shankle's *Motion to Designate* be denied.

Respectfully submitted this 14th day of September, 2023.

GIVENS PURSLEY LLP



By _____
Charlie S. Baser



By _____
Taylor J. Barton

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 14th day of September, 2023, the foregoing was filed and served as follows:

DOCUMENT FILED:

IDAHO DEPARTMENT OF WATER
RESOURCES
Water Management Division
322 E Front St
PO Box 83720
Boise, ID 83720-0098
Email: file@idwr.idaho.gov

☐	U. S. Mail
☐	Hand Delivered
☐	Overnight Mail
☐	Facsimile
☒	E-mail

SERVICE COPIES TO:

Chris M. Bromley
Candice M. McHugh
MCHUGH BROMLEY, PLLC
380 South 4th St., Suite 103
Boise, ID 83702
Email: cbromley@mchughbromley.com
cmchugh@mchughbromley.com

☒	U. S. Mail
☐	Hand Delivered
☐	Overnight Mail
☐	Facsimile
☒	E-mail



Charlie S. Baser

EXHIBIT A

SCANNED

SEP 19 2023

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

RECEIVED

AUG 16 2023

DEPARTMENT OF
WATER RESOURCES

NOTICE OF CHANGE IN WATER RIGHT OWNERSHIP

1. List the numbers of all water rights and/or adjudication claim records to be changed. If you only acquired a portion of the water right or adjudication claim, check "Yes" in the "Split?" column. If the water right is leased to the Water Supply Bank, check "Yes". If you are not sure if the water right is leased to the Water Supply Bank, see #7 of the instructions.

Water Right/Claim No.	Split?	Leased to Water Supply Bank?	Water Right/Claim No.	Split?	Leased to Water Supply Bank?
67-4115-B	Yes ☐	Yes ☐		Yes ☐	Yes ☐
67-11330	Yes ☐	Yes ☐		Yes ☐	Yes ☐
	Yes ☐	Yes ☐		Yes ☐	Yes ☐
	Yes ☐	Yes ☐		Yes ☐	Yes ☐
	Yes ☐	Yes ☐		Yes ☐	Yes ☐

2. Previous Owner's Name: John E. Elsberry

Name of current water right holder/claimant

3. New Owner(s)/Claimant(s): Monte R. & Dayna M. Eppich

New owner(s) as listed on the conveyance document

Name connector ☐ and ☐ or

P.O. Box 764

Mailing address

Council

City

ID

State

83612

Zip

(208) 253 4648

Telephone

dmeppich7@gmail.com

Email

4. If the water rights and/or adjudication claims were split, how did the division occur?
- ☐ The water rights or claims were divided as specifically identified in a deed, contract, or other conveyance document.
- ☒ The water rights or claims were divided proportionately based on the portion of their place(s) of use acquired by the new owner.
5. Date you acquired the water rights and/or claims listed above: March 11, 2022
6. Do you own the land identified as the water right place of use? Yes ☒ No ☐
- ☐ If no, attach evidence that written notice of the change of water right ownership has been delivered to the landowner of record.

7. This form must be signed and submitted with the following **REQUIRED** items:
- ☒ A copy of the conveyance document – warranty deed, quitclaim deed, court decree, contract of sale, etc. The conveyance document must include a legal description of the property or description of the water right(s) if no land is conveyed.
- ☒ Plat map, survey map or aerial photograph which clearly shows the place of use and point of diversion for each water right and/or claim listed above (if necessary to clarify division of water rights or complex property descriptions).
- ☒ Filing fee (see instructions for further explanation):
- ☐ \$25 per undivided water right.
 - ☐ \$100 per split water right.
 - ☐ No fee is required for pending adjudication claims.
- ☐ If water right(s) are leased to the Water Supply Bank AND there are multiple owners, a Lessor Designation form is required.
- ☐ If water right(s) are leased to the Water Supply Bank, the individual owner or designated lessor must complete, sign and submit an IRS Form W-9.

SUPPORT DATA

IN FILE # 67-4115B

8. Signature: [Signature] 8/12/2023

Signature of new owner/claimant

Title, if applicable

Date

Monte R. Eppich

Print name

- Signature: [Signature] 8-12-2023

Signature of new owner/claimant

Title, if applicable

Date

Dayna M. Eppich

Print name

Received by KM Date 8-16-23 For IDWR Office Use Only: Receipt No. C116896 Receipt Amt. 200 -

Active in the Water Supply Bank? Yes ☐ No ☒ If yes, forward to the State Office for processing W-9 received? Yes ☐ No ☐

Name on W-9 _____ Approved by DM Processed by DM Date 8-24-23

SEP 19 2023

Instrument # 139422

COUNCIL, ADAMS, IDAHO

3-14-2022 02:41:10 PM No. of Pages: 2

Recorded for : TIMBERLINE TITLE & ESCROW

SHERRY WARD

Fee: 15.00

Ex-Officio Recorder Deputy

Index to: DEED

WARRANTY DEED

For Value Received, THE JOHN EUGENE ELSBERRY REVOCABLE TRUST dated March 17, 2014

the grantor, does hereby grant, bargain, sell and convey unto
MONTE R. EPPICH and DAYNA M. EPPICH, husband and wife

the grantees, whose current address is PO Box 764, Council, ID 83612

the following described premises, in Adams County, Idaho, to-wit:

SEE ATTACHED EXHIBIT 'A' MADE A PART HEREOF:

TO HAVE AND TO HOLD THE said premises, with their appurtenances unto the said Grantees, their heirs and assigns forever. And the said Grantor hereby covenants to and with the said Grantees, that it is the owner in fee simple of said premises; that they are free from all encumbrances excepting for all easements of record, rights of way, matters visible, and all matters of record and title and that they will warrant and defend the same from all lawful claims whatsoever.

Date: March 11, 2022

THE JOHN EUGENE ELSBERRY REVOCABLE
TRUST dated March 17, 2014

BY: John Eugene Elsberry
JOHN EUGENE ELSBERRY, Trustee

STATE OF Idaho,
COUNTY OF Adams^{ss}

On this 11th day of March, in the year of 2022, before me, a Notary Public in and for said State, personally appeared JOHN EUGENE ELSBERRY known or identified to me to be the person(s) whose name(s) is/are subscribed to the within instrument as Trustee of THE JOHN EUGENE ELSBERRY REVOCABLE TRUST dated March 17, 2014 and acknowledged to me that he executed the same as such Trustee.



Karen L. Amidon
Notary Public
Residing at: Cambridge ID
Commission expires: 6-26-27

#22-1123

SCANNED

SEP 19 2023

EXHIBIT 'A'

A parcel being a portion of the NW1/4 of Section 15 in Township 17 North, Range 1 West, Boise Meridian, Adams County, Idaho and more particularly described as follows:

Commencing at the Northeast corner of said NW1/4, (N1/4 corner, Section 15), a found 5/8 inch diameter rebar;

Thence North 88°07'10" West along the North boundary of the NW1/4 a distance of 831.11 feet to the TRUE POINT OF BEGINNING, witnessed by a ½ inch x 24 inch rebar set with a plastic cap stamped P.L.S. 15352 bearing South 2°39'21" West a distance of 40.00 feet;

Thence South 2°39'21" West a distance of 642.63 feet to a ½ inch x 24 inch rebar set with a plastic cap stamped P.L.S. 15352;

Thence South 82°37'59" West a distance of 129.35 feet to a ½ inch x 24 inch rebar set with a plastic cap stamped P.L.S. 15352;

Thence South 30°37'05" West a distance of 167.48 feet to a ½ inch x 24 inch rebar set with a plastic cap stamped P.L.S. 15352;

Thence South 3°52'43" West a distance of 730.89 feet to a ½ inch x 24 inch rebar set with a plastic cap stamped P.L.S. 15352;

Thence South 57°29'58" East a distance of 472.76 feet to a ½ inch x 24 inch rebar set with a plastic cap stamped P.L.S. 15352;

Thence North 26°20'41" East a distance of 131.37 feet to a ½ inch x 24 inch rebar set with a plastic cap stamped P.L.S. 15352;

Thence North 7°39'35" West a distance of 531.25 feet to a ½ inch x 24 inch rebar set with a plastic cap stamped P.L.S. 15352;

Thence North 13°02'37" East a distance of 130.10 feet to a ½ inch x 24 inch rebar set with a plastic cap stamped P.L.S. 15352;

Thence North 73°15'19" East a distance of 227.57 feet to a ½ inch x 24 inch rebar set with a plastic cap stamped P.L.S. 15352;

Thence South 50°54'19" East a distance of 502.06 feet to a ½ inch x 24 inch rebar set with a plastic cap stamped P.L.S. 15352;

Thence North 87°33'22" East a distance of 59.79 feet to a ½ inch x 24 inch rebar set with a plastic cap stamped P.L.S. 15352;

Thence South 2°58'33" West a distance of 81.81 feet to a ½ inch x 24 inch rebar set with a plastic cap stamped P.L.S. 15352;

Thence South 1°33'13" West a distance of 1306.58 feet to a point on the South boundary of the NW1/4, a ½ inch x 24 inch rebar set with a plastic cap stamped P.L.S. 15352;

Thence North 88°34'32" West along said South boundary a distance of 800.74 feet to a point on the center thread of the Weiser River, witnessed by a ½ inch x 24 inch rebar set with a plastic cap stamped P.L.S. 15352 bearing South 88°34'32" East a distance of 107.95 feet;

Thence traversing said center thread as follows:

North 41°42'14" West a distance of 199.38 feet;

North 1°09'36" East a distance of 232.83 feet;

North 19°45'46" West a distance of 148.34 feet;

North 55°03'11" West a distance of 492.43 feet;

North 12°51'43" West a distance of 620.08 feet;

North 3°07'16" West a distance of 357.72 feet;

North 17°50'43" West a distance of 186.36 feet;

North 39°05'25" West a distance of 164.81 feet;

North 3°32'01" West a distance of 256.90 feet;

North 11°18'15" East a distance of 340.68 feet to a point on the North boundary of the NW1/4, a Magnail set with an aluminum washer stamped P.L.S. 15352;

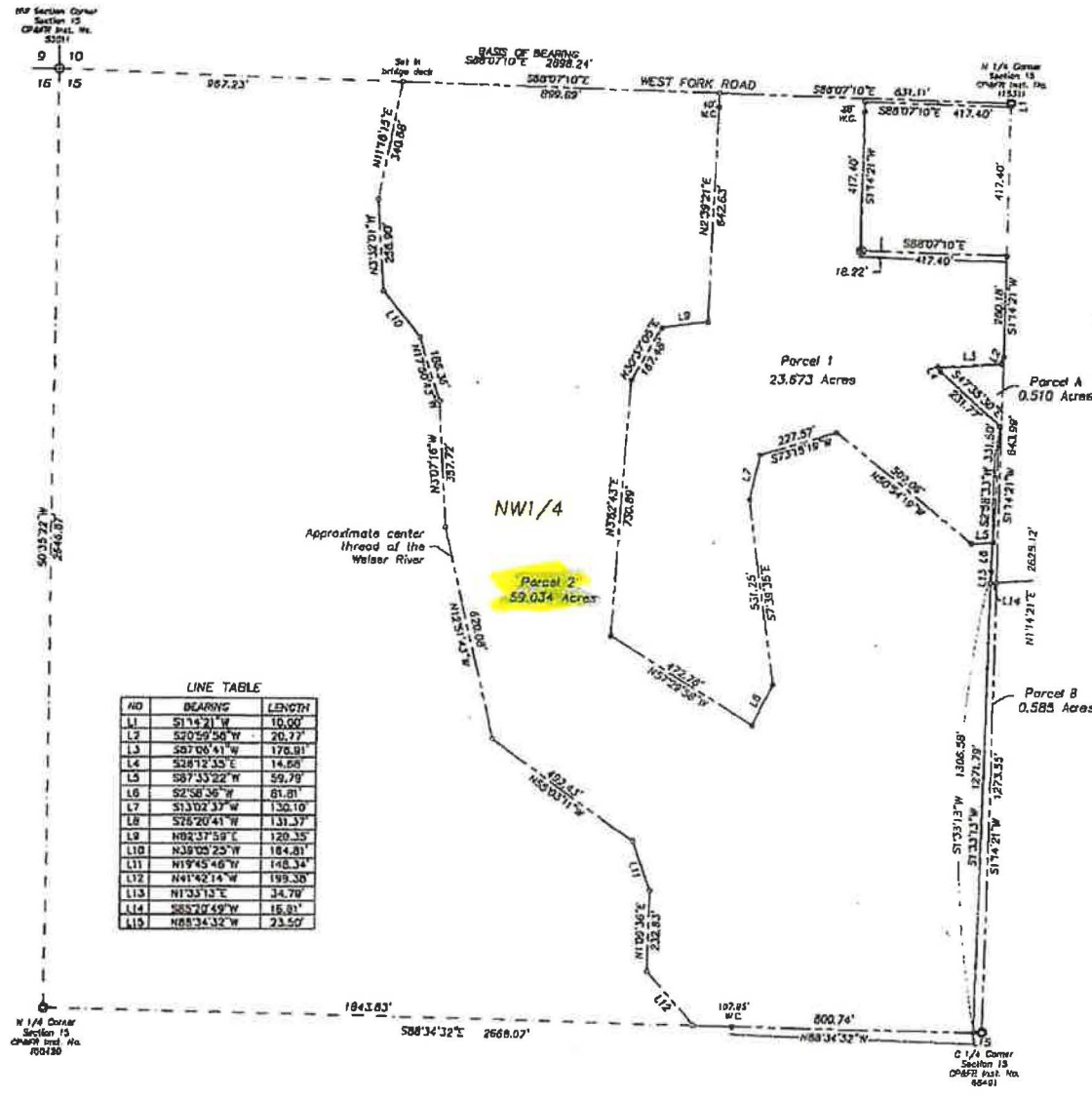
Thence leaving said centerline, bearing South 88°07'10" East along said North boundary a distance of 899.89 feet to the TRUE POINT OF BEGINNING.

SCANNED

SEP 19 2023

A PORTION OF THE NW 1/4 OF SECTION 13,
TOWNSHIP 17 NORTH, RANGE 1 WEST, BOISE MERIDIAN,
ADAMS COUNTY, IDAHO

Instrument # 138880
COUNCIL, BAKER, WAUG
5-4-021 OTHER PER POLYPROP
EXPANSION TV; GROUND LAMP AND
CHRYST MOON REC. L.M.
EX-0205 BAKERSIDE Copied
MADE FOR SURVEY



Reference Survey:
Inst. No. 89781
Inst. No. 65477
Inst. No. 83013
Inst. No. 58894
Inst. No. 100493
Inst. No. 94099
Inst. No. 58276
Inst. No. 78594
Inst. No. 97178
Inst. No. 107148
Fruitvale Townsite
Book: 9M Page: 76

Reference Dard:
Inst. No. 12531

0' 200' 400'

Scale: 1" = 200'

- ④ ALUMINUM CAP MONUMENT - FOUND
- ⑤ 3/8" REBAR - FOUND
- ⑥ 5/8" x 24" REBAR - SET
- ⑦ 1/2" x 24" REBAR - SET
- ⑧ MAGNAIL W/ ALUMINUM WASHER - SET
- ⑨ CALCULATED POINT

— PROPERTY BOUNDARY LINE
 — SECTION/ALLOTMENT PART LINE
 — FENCE LINE

Snyder's Narrative W.C. INTENSE CORNER
This survey was performed at the request of John Estabro to fill the property described in the referenced case. The East boundary of said property was required to follow existing fence lines. Section corners were located and the following bearings and distances to the North 1/4 corner has multiple monuments and the one shown on this survey is held due to the lines of occupation more closely matching its position. The East boundary was several exceptions which had inconsistencies and didn't follow the lines of occupation. The fence line was shown as large and irregular and it was determined to be made to match the fence line. The parcel was divided of the clients direction as shown.

COMPLETION DATE

CERTIFICATION

I, Thomas A. Withard, do hereby certify that I am a Professional Land Surveyor, licensed by the State of Idaho, and that this map has been prepared from an actual survey made on the ground under my direct supervision, that this map is an accurate representation of said survey, and that it is in conformity with the Corner Perpetuation Act, Idaho Code 55-1501 through 55-1612.



INDEX No. 1714-15-4-0-0-00-00

SURVEY FOR

JOHN ELSBERRY

Drawn By: ZC

Date: Dec. 14, 2020

Surveyed By: ZCL

Job No. 0C3520

Skinner
Land Survey
17048 Sand Hollow Road
Caldwell, Idaho 83407
(208)-454-0833
WWW.SKINNERLANDSURVEY.COM

17048 Sand Hollow Road
Caldwell, Idaho 83407
(208)-434-0833
WWW.SKINNEBLANDSURVEY.COM

SCANNED
SEP 19 2023

Mansfield, Debra

From: Mansfield, Debra
Sent: Thursday, August 24, 2023 9:21 AM
To: IdwrPayable
Subject: REFUND - Monte Eppich

TO: Sascha Marston, Susan Steed

FROM: Debra Mansfield

DATE: August 24, 2023

RE: Refund: Notice Of Change In Water Right Ownership

Monte R & Dayna M Eppich submitted a Notice Of Change In Water Right Ownership for two splits but no splits were required

Please issue a refund of \$150.00 to:

MONTE EPPICH
PO BOX 764
COUNCIL ID 83612-0764

RECEIPT #

C116896

Thank you,

Debra Mansfield | Office Specialist II
IDWR - Western Region
2735 W Airport Way, Boise ID 83705
(208) 334-2190 | Debra.Mansfield@idwr.idaho.gov

SCANNED

SEP 19 2023



IDAHO DEPARTMENT OF
WATER RESOURCES

Western Region • 2735 W Airport Way • Boise, ID 83705-5082

Phone: 208-334-2190 • Fax: 208-334-2348 • Email: westerninfo@idwr.idaho.gov • Web: idwr.idaho.gov

Governor Brad Little

Director Gary Spackman

August 24, 2023

MONTE R EPPICH & DAYNA M EPPICH
PO BOX 764
COUNCIL ID 83612-0764

Re: Change in Ownership for Water Right No(s): **67-4115B, 67-11330**

Dear Water Right Holder(s):

The Department of Water Resources (Department) acknowledges the receipt of correspondence changing ownership of the above referenced water right(s) to you. The Department has modified its records and has enclosed a computer-generated report for you.

While processing your Notice, it was found that you submitted total payment of \$200.00 to the Department. The required fee for this Notice is only \$50.00, and the remainder will be refunded to you. A refund of \$150.00 has been requested and will be mailed to MONTE EPPICH under separate cover from the Idaho State Controller's Office.

Updating the ownership record for a water right does not reconfirm the validity of the right. When processing a Notice of Change in Water Right Ownership, the Department does not review the history of water use to determine if the right has been forfeited or deliberately abandoned through five years or more of non-use. To read more about water right forfeiture, including how to protect a water right from forfeiture, please see Idaho Code §§ 42-222 and 42-223.

Please note, water right owners are required to report any change of water right ownership and any change of mailing address to the Department within 120 days of the change. Reporting forms are available from any office of the Department, or from the Department's website.

If you have any questions concerning the enclosed information, please contact me at (208)605-4620.

Sincerely,

Debra Mansfield
Office Specialist II

Enclosure(s)

SCANNED

SEP 19 2023

**IDAHO DEPARTMENT OF WATER RESOURCES
Proof Report**

8/24/2023

Water Right 67-4115B

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	MONTE R EPPICH PO BOX 764 COUNCIL, ID 83612-0764 (208) 253-4548
Current Owner	DAYNA M EPPICH PO BOX 764 COUNCIL, ID 83612-0764 (208) 253-4648
Original Owner	MELVIN D RYALS 2243 SAWMILL RD COUNCIL, ID 83612-5003 (208) 253-4753
Previous Owner	JOHN E ELSBERRY PO BOX 698 COUNCIL, ID 83612

Priority Date: 5/10/1918

Basis: Decreed

Status: Active

Source
WEISER RIVER

Tributary
SNAKE RIVER

<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
IRRIGATION	03/15	11/15	0.290 CFS	
	<u>Total Diversion</u>		0.290 CFS	

Source and Point(s) of Diversion:

WEISER RIVER NWSW Sec. 10, Twp 17N, Rge 01W, ADAMS County

Place Of Use:

IRRIGATION within ADAMS County

			NE				NW				SW				SE				Totals
Twp	Rng	Sec	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
17N	01W	15					10.5	4.5											15.0

POU Total Acres: 15.0

Conditions of Approval:

IDAHO DEPARTMENT OF WATER RESOURCES
Proof Report

8/24/2023

1. C18 This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

Dates and Other Information:

Decreed Date: 10/20/2008
Civil Case Number: 39576
Judicial District: FIFTH
State or Federal: S
Water District Number: 67
Mitigation Plan: False

Combined Use Limits:

N/A

SubCase:

N/A

Water Supply Bank:

N/A

**IDAHO DEPARTMENT OF WATER RESOURCES
Proof Report**

8/24/2023

Water Right 67-11330

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	MONTE R EPPICH PO BOX 764 COUNCIL, ID 83612-0764 (208) 253-4548
Current Owner	DAYNA M EPPICH PO BOX 764 COUNCIL, ID 83612-0764 (208) 253-4648
Original Owner	MELVIN D RYALS 2243 SAWMILL RD COUNCIL, ID 83612-5003 (208) 253-4753
Previous Owner	JOHN E ELSBERRY PO BOX 698 COUNCIL, ID 83612

Priority Date: 7/1/1961
Basis: Decreed
Status: Active

<u>Source</u>	<u>Tributary</u>
WEISER RIVER	SNAKE RIVER

<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
IRRIGATION	03/15	11/15	0.310 CFS	
	<u>Total Diversion</u>		0.310 CFS	

Source and Point(s) of Diversion:
 WEISER RIVER NWSW Sec. 10, Twp 17N, Rge 01W, ADAMS County

Place Of Use:
 IRRIGATION within ADAMS County

			NE					NW					SW					SE				
Twp	Rng	Sec	NE	NW	SW	SE		NE	NW	SW	SE		NE	NW	SW	SE		NE	NW	SW	SE	Totals
17N	01W	15						3.4					12.0									15.4

POU Total Acres: 15.4

Conditions of Approval:

IDAHO DEPARTMENT OF WATER RESOURCES
Proof Report

8/24/2023

- | | | |
|----|-----|---|
| 1. | W67 | Use of this right is combined with water from Farmers Canal Water Users Association. |
| 2. | C18 | This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code. |

Dates and Other Information:

Decreed Date: 10/20/2008
Civil Case Number: 39576
Judicial District: FIFTH
State or Federal: S
Water District Number: 67
Mitigation Plan: False

Combined Use Limits:

N/A

SubCase:

N/A

Water Supply Bank:

N/A

August 15, 2023

RECEIVED

AUG 16 2023

DEPARTMENT OF
WATER RESOURCES

To whom it may concern:

We have contacted the IDWR in order to accurately fill out the Notice of Change in Water Right Ownership form for Claim number 67-4115-B and 67-11330. However, after speaking to your offices, we are still unsure on which boxes to correctly mark on #1 and as such have intentionally left it blank. We do not want to mark the incorrect box and impede the process. We called the office again and we were told to include all the requested documentation and this note and your offices would be able to process Notice of Change in Water Right Ownership form as is.

We have included the \$100 fee per water right (\$200 total) in the event that your department deems that a split is indeed indicated. Your agent stated that if this is not the case, a refund would be issued.

If you have any questions and need to contact me, I would be happy to supply any additional information or documentation that is needed.

Thank you all for your help and guidance.

Sincerely,

Monte and Dayna Eppich

A handwritten signature in black ink that reads "Monte & Dayna Eppich". The signature is written in a cursive, flowing style.

SCANNED

SEP 19 2023

RECEIVED

Sep 08, 2023

DEPARTMENT OF
WATER RESOURCES

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cmchugh@mchughbromley.com

Attorneys for Jeanette Shankle

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF CHANGE OF
OWNERSHIP FOR WATER RIGHT NOS.
67-4115B AND 67-11130

**MOTION TO DESIGNATE APPROVAL
IN CHANGE OF OWNERSHIP AS A
FINAL ORDER AND REQUEST FOR
HEARING**

COMES NOW Jeanette Shankle ("Petitioner") by and through its attorneys of record, McHugh Bromley, PLLC, and hereby moves the Idaho Department of Water Resources ("IDWR") to designate its approvals August 24, 2023 approval of change of ownership in water rights 76-4115B and 67-11130 as either preliminary, recommended, or final order, pursuant to Rule 750, and pursuant to Idaho Code §42-1701A(3) hereby request a hearing on the same.

This Motion is based upon the following:

1. On or about August 16, 2023, Monte and Dayna Eppich ("Eppichs") filed with IDWR a *Notice of Change in Water Right Ownership*.
2. On or about August 24, 2023, IDWR via letter stated that it "acknowledges the receipt of correspondence changing ownership of the above reference water rights to you. The

MOTION TO DESIGNATE APPROVAL IN CHANGE OF OWNERSHIP AS A FINAL ORDER AND
REQUEST FOR HEARING

SCANNED
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SEP 19 2023

Department has modified its records and has enclosed a computer-generated report for you.”

3. No notice was provided or published regarding the change in ownership.
4. Petitioner disputes that the Eppichs are the true and lawful owners of the full water rights and therefore asks for a hearing.
5. Rule 11 defines “Order: as “An agency action of particular applicability that determines the legal rights, duties, privileges, immunities, or other legal interests of one (1) or more specific persons. The approval of the change in ownership determines legal rights, duties, privileges and other legal interests of specific persons and specifically impacts Ms. Shankle’s legal rights, duties, privileges and interests upon the information and belief that she is as an owner of property to which at least a portion of the water rights are appurtenant. Thus, the approvals fall within the definition of an “order” under Rule 11.
6. Rule 750 states: If an order does not designate itself as recommended, preliminary or final at its release, but is designated as recommended, preliminary or final after its release, its effective date for purposes of reconsideration or appeal is the date of the order of designation. If a party believes that an order not designated as a recommended order, preliminary order or final order according to the terms of these rules should be designated as a recommended order, preliminary order or final order, the party may move to designate the order as recommended, preliminary, or final, as appropriate.
7. Petitioner moves IDWR to identify what form of order (preliminary recommended, final) the approval of the change in ownership is and to provide them the ability to challenge the requests and to designate such orders as preliminary, recommended, or final.
8. Furthermore, no hearing has been provided under Idaho Code §67-1701A(3)

MOTION TO DESIGNATE APPROVAL IN CHANGE OF OWNERSHIP AS A FINAL ORDER AND
REQUEST FOR HEARING

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SEP 19 2023

Therefore the Petition requests that IDWR designate the approval of the change of ownership as a preliminary, recommended or final order, designate a contested case and grant the Petitioner a hearing on the same.

RESPECTFULLY SUBMITTED this 8th day of September 2023.

MCHUGH BROMLEY, PLLC



CANDICE M. MCHUGH

Attorneys for Jeanette Shankle

MOTION TO DESIGNATE APPROVAL IN CHANGE OF OWNERSHIP AS A FINAL ORDER AND
REQUEST FOR HEARING

SCANNED
3

SEP 19 2023

CERTIFICATE OF SERVICE

I certify that on this 8th day of September, 2023, I caused to be served a true and correct copy of the foregoing *Motion to Designate* upon the following persons by the method(s) indicated:

Idaho Dept. of Water Res.
file@idwr.idaho.gov
gbaxter@idwr.idaho.gov

Monte R Eppich
Dayna M Eppich
PO Box 764
Council, ID 83612-0764

Via US Mail Postage prepaid
And email: dmeppich7@gmail.com



CANDICE M. MCHUGH