



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Shoshone Field Office

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<http://www.id.blm.gov/shoshone>



In reply, refer to:

2520 (ID230)

IDI-28777

November 28, 2007

CERTIFIED MAIL 7006 3450 0000 5045 5336

RETURN RECEIPT REQUESTED

Decision

Richard L. Graves

2082 South 2000 East

Gooding, Idaho 83330

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Desert Land Application

IDI-29777

Application Rejected

On March 3, 1993 Richard L. Graves filed an application for entry under the Desert Land Act. The application for 320 acres described as T. 6 S., R. 15 E., Boise Meridian, Idaho, section 21, NESE, NWSE, SESE; section 22, NESW, NWSW, SWSW; section 27, NWNW; section 28, NENE; was held pending completion of land use planning. On August 18, 2003, planning was completed allowing processing of this application.

As a result of meetings on July 14, 2006, September 28, 2006, and February 14, 2007 where we requested any new or additional data that would improve the economic viability of your DLE proposal, we have reassessed the economics of your application.

In accordance with 43 CFR 2520.0-8(d)(3), the application has been examined to determine whether the entry can be allowed in the form sought. The economic feasibility of farming the lands as an operating unit was accomplished with a computer-generated model (FARMBUD) which was developed in accordance with a Cooperative Agreement (Idaho-184) between the Idaho Department of Water Resources and the BLM. Some specific sources of information have been attached for your information.

The economic analysis shows desert land application IDI-29777 would have an annual operating cost of \$223,788.50, total revenue of \$138,703.60, for a loss of \$85,084.88.

The recent Idaho Department of Water Resources (IDWR) Directors orders (June 15, 2007) concerning the curtailment of water rights within the Thousand Springs Delivery Calls Potential Curtailment Areas represents both an additional economic expense on agricultural development in the curtailment areas and also challenges the capability to meet the irrigation “sufficiency” requirements as defined in 43 CFR 2520.0-5(5) of the Desert Land Act regulations. The mitigation costs for replacement water incurred by ground water users in the Thousand Springs Curtailment areas are not included in the present computer model for assessing the economic feasibility of your DLE application. Accordingly, the aforementioned operating costs generated by the computer model could be substantially under stated.

Further regulations contained in 43 CFR 2520.6(h) require that the water right “must entitle the claimant to use of a sufficient water supply of water to irrigate successfully all the irrigable land embraced in his entry.” Pending water permit number 37-07371 with a priority date of July 31, 1974 from a ground water source has been identified as the water supply for the DLE application. This water permit resides within Water District 130. The water district has been subject to “calls for water” by senior water rights holders asking that junior water rights holders be curtailed every year since 2003. The Rangen call affects water uses junior to July 13, 1962. The Clear Springs Food/Snake River Farms call affects water users junior to July 10, 1970. The ground water aquifer from which water permit 37-07371 relies is in a state of decline, therefore it is unlikely that the water permit would be allowed to divert water now or in the future without providing mitigation. Mitigation is achieved by providing replacement water (or rental water), which is water designated for use on existing agricultural lands. It is not appropriate to take existing and productive farm land out of production in order to pursue a DLE. Rental water is also not a commodity that can be guaranteed year in and year out. Regulations contained in 43 CFR 2521.2(c)(2)(d) require “permanent” water, therefore any water right that requires mitigation, replacement water, or rental water, in order to exercise said water right, is not consistent with regulation. In addition, water permit 37-07371 relies on “trust water.” Trust water is water that is managed by the State of Idaho provided it ensures sufficient flows to power generation pursuant to the Swan Falls Agreement. Idaho Power has recently initiated a law suit stating that water rights that rely on trust water are further degrading flows meant for power generation. It is our opinion that permit 37-07371 does not provide a right to the permanent use of a sufficient supply of water to successfully irrigate and reclaim the entry.

Pursuant to 43 CFR 2520.0-8(d)(3), and based on previously described result of the economic analysis, desert land application IDI-29777 is hereby rejected.

This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with regulations contained in 43 CFR, Part 4 and the enclosed form ID 1842-1. If an appeal is taken, your notice of appeal must be filed in this office (at the above address) within 30 days of receipt of this decision. The appellant has the burden of showing that the decision being appealed is in error.

If you wish to file a petition pursuant to regulation 43 CFR 4.21 (58 FR 4939, January 19, 1993) or 43 CFR 2804.1 for a stay of the effectiveness of this decision during the time that your appeal is being reviewed by the Board, the petition for stay must accompany your appeal. A petition for

stay is required to show sufficient justification based on the standards listed below. Copies of the notice of appeal and petition for stay must also be submitted to each party named in this decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (see 43 CFR 4.413) at the same time original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulation, a petition for stay of a decision pending appeal shall show sufficient justification based on the following standards:

- (1) The relative harm to parties if a stay is granted or denied,
- (2) The likely of an appellants success on merits,
- (3) The likely of immediate irreparable harm if a stay is not granted, and
- (4) Whether the public interest favors granting a stay.

Sincerely,

Arnold L. Pike
Acting Field Manager

Encl.: H-2520-1 Economic Feasibility Analysis of Desert-Land Act Applications
Form 1842-1 Taking Appeals to the Interior Board of Land Appeals

cc: Dave Tuthill, Director, Department of Water Resources, State Office, The
Idaho Water Center, 322 E. Front St., Boise, Idaho 83720-0098
Senator Crapo, Attn: Katie Shewmaker, 202 Falls Ave., Ste. 2, Twin Falls,
Idaho 83301