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DEPARTMENT OF
WATER RESOURCES

STATE OF IDAHO

OFFICE OF THE ATTORNEY GENERAL

LAWRENCE G. WASDEN

February 5, 2018

Mr. Gary Spackman, Director
Idaho Department of Water Resources
PO Box 83720
Boise ID 83720-0098

RE: IWRB Comments on IWRB's Application to Rent Water Right Permit 37-7842 from the Water Supply Bank.

Dear Director Spackman,

On December 12, 2017, the Idaho Water Resource Board ("IWRB") submitted applications to lease water right license 37-7842 to the Water Supply Bank and rent water right license 37-7842 from the Water Supply Bank. In early January 2018, the Idaho Department of Water Resources issued a public notice soliciting comments on the application for rental based on the criteria of I.C. § 42-1763. The deadline for submission of comments on the rental was set for January 22, 2018.

On January 8, 2018, the IWRB withdrew its applications for lease and rental based on license 37-7842 and submitted an application to lease water right permit 37-7842 to the Water Supply Bank and rent water right permit 37-7842 from the Water Supply Bank. The new application for rental based on the permit was not re-advertised, however, a letter sent to Mr. Joseph James on January 10, 2018, noted that the deadline for comments had been extended to February 5, 2018.

The terms and conditions of any rental of water from the water supply bank must be approved by the Director of IDWR. I.C. § 42-1763. The Director may:

[R]eject and refuse approval for or may partially approve for a less quantity of water or may approve upon conditions any proposed rental of water from the water supply bank where the proposed use is such that it will reduce the quantity of water available under other existing water rights, the water supply involved is insufficient for the purpose for which it is sought, the rental would cause the use of water to be enlarged beyond that authorized under the water right to be rented, the rental will conflict with the local public interest as defined in section 42-202B, Idaho Code, or the rental will

adversely affect the local economy of the watershed or local area within which the source of water for the proposed use originates

I.C. § 42-1763. The Director may give notice of an intended rental as he deems necessary. IDAPA 37.02.03.030.02. The notice published by the Director sought comments on the rental of water right permit 37-7842 based on the criteria of I.C. § 42-1763.

Comments

The IWRB hereby submits these comments regarding rental of water right permit 37-7842 from the Water Supply Bank.

1. The Quantity of Water Available under Existing Water Rights Will Not be Reduced by the Rental of Permit 37-7842.

Water use for managed aquifer recharge must be done in accordance with the prior appropriate doctrine and is subject to administration by the water district in which it is conducted. To ensure that other water rights are not injured by the operations of an aquifer recharge project, I.C. § 42-234(4) gives the Director the authority to approve, disapprove, or require alterations in the methods employed to achieve ground water recharge. In the event the Director determines that use of water under Permit 37-7842 is "adversely affecting existing water rights or [is] creating conditions adverse to the beneficial use of water under existing water rights, the director shall order the cessation of operations until such alterations as may be ordered by the director have been accomplished or such adverse effects otherwise have been corrected." I.C. § 42-234(4). In addition, water right permit 37-7842 contains the following condition: "Permit shall be secondary to all prior water rights including rights held by privately owned electrical generating company to appropriate waters in the reaches of the Snake River downstream from the Milner diversion for purpose of hydroelectric generation."

Use of water right permit 37-7842 through a water supply bank rental will be subject to I.C. § 42-234(4), as well as to the conditions on the permit. Rental of water right permit 37-7842 will occur in accordance with the prior appropriation doctrine, as administered by Water District 37. Thus, any use of water right permit 37-7842 through the water supply bank rental, will be subject to prior water rights. Therefore, rental of water right permit 37-7842 will not affect the quantity of water under existing water rights.

2. The Water Supply Involved is Sufficient for the Purpose for which it is Sought.

The use of water under the rental of water right permit 37-7842 can only occur when the right is in priority and when sufficient water supplies exist to satisfy all prior water rights on the system. The quantity of water used under the rental of water right permit 37-7842 will fluctuate depending on the water supply at any given time. Water will only be used through the rental when water is available from the source that is not dedicated to other prior water rights. In addition, pursuant to I.C. § 42-234(3), the Director may

reduce the amount of water that may be diverted for recharge purposes under this right even though there is sufficient water to supply the entire amount authorized for appropriation under the permit. This would allow the Director to stop the rental of water under water right permit 37-7842 even if the water supplies are sufficient. Therefore, the water supply is sufficient to fulfill the rental of water right permit 37-7842.

3. The Rental of Permit 37-7842 Will Not Cause an Enlargement of the Water Right.

As noted above, the quantity of water rented under water right permit 37-7842 at any given time will be adjusted depending on its priority and the availability of natural flow to fulfill the right. The rental of water right permit 37-7842 will never exceed the quantity of water permitted. Should permit 37-7842 be licensed during the pendency of the water supply bank rental, the water supply bank rental quantity should be adjusted to reflect any differences between the permit quantity and ultimate license quantity. A condition should be placed on the water supply bank rental to this effect. Such a condition would prevent enlargement of the water right.

4. The Rental of Permit 37-7842 is in the Local Public Interest.

The IWRB's recharge efforts in the Eastern Snake Plain Aquifer ("ESPA") are in the local public interest. Idaho Code Section 42-234(1) provides:

It is the policy of the State of Idaho to promote and encourage the optimum development and augmentation of the water resources of this state. The legislature deems it essential, therefore, that water projects designed to advance this policy be given maximum support. The legislature finds that the use of water to recharge ground water basins in accordance with Idaho law and the state water plan may enhance the full realization of our water resource potential by furthering water conservation and increasing the water available for beneficial use.

The goal of the Eastern Snake Plain Aquifer Management Plan ("ESPA CAMP") is to sustain the economic viability and social and environmental health of the Eastern Snake Plain by adaptively managing a balance between water use and supplies. The ESPA CAMP sets forth a long term goal of implementing a net annual ESPA water budget change of 600,000 acre-feet through a variety of management options, including managed aquifer recharge. The state has a goal of recharging 250,000 acre-feet per year to the ESPA through managed aquifer recharge projects.

Rental of water right permit 37-7842 is an integral part of the IWRB's recharge efforts for the 2018 recharge season and will be essential to meeting the recharge goals set forth in the ESPA CAMP. The rental of water right permit 37-7842 will advance the local public interest by opportunistically using water not subject to prior water rights to help stabilize and maintain ground water aquifer levels. Therefore, it is in the local public interest to approve the rental of water right permit 37-7842.

Mr. Gary Spackman, Director
February 5, 2018
Page 4

5. The Rental of Permit 37-7842 Will Not Adversely Affect the Local Economy of the Watershed.

As noted above, the goal of the ESPA CAMP and of the IWRB's aquifer recharge program is to sustain the economic viability of the ESPA by enhancing ground water supplies. Therefore, rental of water under water right permit 37-7842 will not adversely affect the local economy of the watershed.

Conclusion

The rental of water right permit 37-7842 from the water supply bank meets all criteria for a rental of water under I.C. § 42-1763. The rental will not have a negative effect on existing water rights, the water supply is sufficient for the purposes sought, it will not cause an enlargement of the water right, it is in the local public interest, and it will not adversely affect the local economy. Therefore, the IWRB respectfully requests that the Director approve a water supply bank rental for water right permit 37-7842.

Sincerely,

A handwritten signature in dark ink, appearing to read "Ann Y. Vonde", written in a cursive style.

ANN Y. VONDE
Deputy Attorney General
Natural Resources Division

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