

Skaggs, Pam

From: Skaggs, Pam
Sent: Tuesday, July 01, 2014 12:42 PM
To: 'carnkend@safelink.net'
Cc: Cooper, Jeff; Palmer, Cherie
Subject: RE: Water Bank irrigation

Mr. Carney,

I received both your email and phone call today when I returned to the office this morning. I want to provide you with the pertinent guidance for evaluating water rights proposed leased to the Water Supply Bank (Bank). Bank Administrative Rule 37.02.03 Rule 25 requires that we complete a review of all rights considered for lease to the Water Supply Bank including rather a right has been lost or forfeited. The defenses to forfeiture are found in part in Idaho Code, 42-223 and case law. Your question appears to hinge on exception or defense number 6 (see below).

IDAPA 37 TITLE 02 CHAPTER 03

37.02.03 - WATER SUPPLY BANK RULES

025. ACQUISITION OF WATER RIGHTS FOR THE BOARD'S WATER SUPPLY BANK (RULE 25).

02. Application. Submitted with the completed application shall be:

- c. Information that the water right has not been lost through abandonment, or forfeiture as defined by [Section 42-222\(2\), Idaho Code](#);

Idaho Code TITLE 42 IRRIGATION AND DRAINAGE -- WATER RIGHTS AND RECLAMATION

42-222. Change in point of diversion, place of use, period of use, or nature of use of water under established rights --
Forfeiture and extension -- Appeals

(2) All rights to the use of water acquired under this chapter or otherwise shall be lost and forfeited by a failure for the term of five (5) years to apply it to the beneficial use for which it was appropriated and when any right to the use of water shall be lost through nonuse or forfeiture such rights to such water shall revert to the state and be again subject to appropriation under this chapter; except that any right to the use of water shall not be lost through forfeiture by the failure to apply the water to beneficial use under certain circumstances as specified in section [42-223](#), Idaho Code.

42-223. Exceptions or defenses to forfeiture. A right to the use of water shall not be lost by forfeiture pursuant to the provisions of section [42-222](#), Idaho Code, for a failure to apply the water to beneficial use under the conditions specified in any subsection of this section.

(6) No portion of any water right shall be lost or forfeited for nonuse if the nonuse results from circumstances over which the water right owner has no control. Whether the water right owner has control over nonuse of water shall be determined on a case-by-case basis.

You can submit lease applications for these rights with complete documentation and history line to support your defense of forfeiture for the acres not irrigated. We focus on the years after the rights were partially decreed in the Snake River Basin Adjudication or 1997 for most of the rights. Rights 36-16395 and 36-15708 were partially decreed in 2001. Please include the last year the subject corner acres associated with each right were irrigated, when the land & rights were leased, and documentation to support your statements that you had no access or recourse.

The last statement of 42-233(6) says that the issue will be determined on a case-by-case basis. Any information you provide in support of these rights will be considered, but I cannot guarantee that the rights will be accepted into the bank. A decision will be reached based on evaluation of all available information.

Please also note that Rights 36-7560 & 36-7408 currently list Barbara J. and Gary Carney as the water right owners. Ownership of the rights proposed leased is another required review factor. The right holder of record or an authorized party for an business entity must file the lease and submit a W-9 with the lease application. If any ownership changes are needed, the Ownership Change form should be submitted before or with the lease application.

You will have to weigh the value of the corner acres against the lease and possibly ownership change fees. If you want to proceed with the applications, you will find them on our website at

Sent USPS to: Carl Carney

3845 2908E

Paul ID 83347

CL 7-1-2014

<http://www.idwr.idaho.gov/RulesStatutesForms/WaterRights/WaterRightForms.htm> under Ownership and Water Bank headers.

Let me know if you have any further questions. I am happy to assist you.

Pam

Pamela S. Skaggs
Water Rights Supervisor
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Fax (208) 287-6700

From: carnkend@safelink.net [mailto:carnkend@safelink.net]
Sent: Monday, June 30, 2014 6:22 PM
To: Skaggs, Pam
Subject: Water Bank irrigation

Pam,

I just talked to Jeff Cooper at the Twin Falls IDWR and he advised me to plead my case with you, so here it is. Over the past 10 yrs. we (Carney Farms) have been turning our farms organic and as they turned organic "Horizon Organic Dairy" would rent our farms.

Now we have always irrigated our corners but as we turned reins over to them and unbeknownst to us they elected to not irrigate the pivot corners even though we **have always charged them the rent money for the entire irrigated acres**, and now I've learned our water rights have been jeopardized on behalf of their irrigation techniques.

In my situation is a "catch 22" because Horizon held the reins, for I couldn't have banked the water because they were paying for the irrigated acres and at any time new management practices could have changed at a days notice and they proclaimed to have the option to irrigate the corners, and yet on the other hand I could not have invaded their farms/pastures and irrigate the corners myself, it was in the lease we couldn't even step foot on the land without 48 hrs notice.

Now 6 months ago Horizon has sold and are leases are transferred to the new lessee (Sunrise Organic) Finally I'm asking for leniency, if I can get the new owners to commit that their not intending to farm the corners and now put them in the water bank. Thanks for your time. Regards Paul Carney

This pertains to: WATER RIGHT NO. 36-2369, 36-7408, 36-7560, 36-16395, 36-15708, 36-2385

Skaggs, Pam

From: Microsoft Outlook
To: carnkend@safelink.net
Sent: Tuesday, July 01, 2014 12:42 PM
Subject: Undeliverable: RE: Water Bank irrigation

mail.svskylan.net rejected your message to the following e-mail addresses:

carnkend@safelink.net (carnkend@safelink.net)

mail.svskylan.net gave this error:

Your message was rejected by this user and was not delivered. Reason: Messages from your location are rejected, identification (HELO) has no matching DNS entry. Protection provided by: MagicMail version 2.0

For more information, please visit the URL:

http://www.linuxmagic.com/best_practices/resolve_helo_domain.html or contact your ISP or mail server operator. 61229cfe-014f-11e4-9ae5-005056ba3470

*message sent by USPS.
7-1-14*

A problem occurred during the delivery of this message to this e-mail address. Try sending this message again. If the problem continues, please contact your helpdesk.

Diagnostic information for administrators:

Generating server: DWRBOIMB03.dwrprod.idaho.gov

carnkend@safelink.net

mail.svskylan.net #550-Your message was rejected by this user and was not delivered. 550-Reason: Messages from your location are rejected, identification (HELO) has no matching DNS entry. 550-Protection provided by: MagicMail version 2.0
550-For more information, please visit the URL: 550-
http://www.linuxmagic.com/best_practices/resolve_helo_domain.html 550-or contact your ISP or mail server operator.
550 61229cfe-014f-11e4-9ae5-005056ba3470 ##

Original message headers:

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DWRBOIMB03.dwrprod.idaho.gov ([10.220.11.42]) with mapi id 14.03.0181.006;
Tue, 1 Jul 2014 12:41:56 -0600
From: "Skaggs, Pam" <Pam.Skaggs@idwr.idaho.gov>
To: "carnkend@safelink.net" <carnkend@safelink.net>
CC: "Cooper, Jeff" <Jeff.Cooper@idwr.idaho.gov>, "Palmer, Cherie"
<Cherie.Palmer@idwr.idaho.gov>
Subject: RE: Water Bank irrigation
Thread-Topic: Water Bank irrigation
Thread-Index: AQHPMKGCjbOXCxfGUGbO6q0G8H/4puLdgVQ
Date: Tue, 1 Jul 2014 18:41:56 +0000

Message-ID: <E06A860ACCB4A44580192DEB47E1960D3663D0@DWRBOIMB03.dwrprod.idaho.gov>
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In-Reply-To: <D310DEBB01F24DC0BF8A88E12CDE0C80@Monte>
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Content-Language: en-US
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