

MEMORANDUM

To: Files 35-2189B and 35-11411

From: Cherie Palmer

Date: July 22, 2013

Re: Review/Analysis for Application to Rent Water from the State Water Supply Bank

PURPOSE/NARRATIVE: This application to rent water is in response to a pending NOV issued by the Compliance Bureau. It appears that the right holder has been illegally diverting water on the land identified in the application for many years.

AUTHORITY TO FILE: The Talbots own the land where the POD is located according to county taxlot data but, the Windburgs have been under contract to purchase the property and technically have authority to lease the land to another (see attached email from the county). The right holder has provided the real estate lease between the Winbergs and Lance Funk Farms. The land in the NESW and SWSE is owned by the BLM. The BLM reached an agreement with the Funks for the 2013 season. Apparently, BLM authorized the irrigation of their land but, 2013 would be the last season they will authorize the encroachment. The rental application is signed by Lance Funk. There are no authority issues that haven't been addressed.

WATER RIGHT VALIDITY: Rights 35-2189B and 35-11411 have been leased to the Bank this season and have been confirmed as being valid. The lessor of rights 35-2189B and 35-11411 has recently changed irrigation practices to pivots and put the corners in the Bank. It looks like there are no issues for a year's rental (see image 1 below for reference purposes).

INJURY TO OTHER WATER RIGHTS: The water will be moving nearly 12 miles to the SW as the crow flies. Greg of Brockway Engineering ran the ESPA modeling and has confirmed that injury will not be an issue.

ENLARGEMENT OF USE: Enlargement does not appear to be an issue for this rental.

LOCAL PUBLIC INTEREST: Review staff has no information to suggest this application is inconsistent with the local public interest.

BENEFICIAL USE/CONSERVATION OF WATER RESOURCES: The rental appears consistent with conservation of water resources in Idaho.

DEPARTMENT STAFF OR WATERMASTER COMMENTS: Watermaster for water district #120 had a comment regarding future years but did not oppose the application. Please see the attached email.

Legend

- Township/Range
- Sections
- QQ

7/7/2012 Landsat Imagery

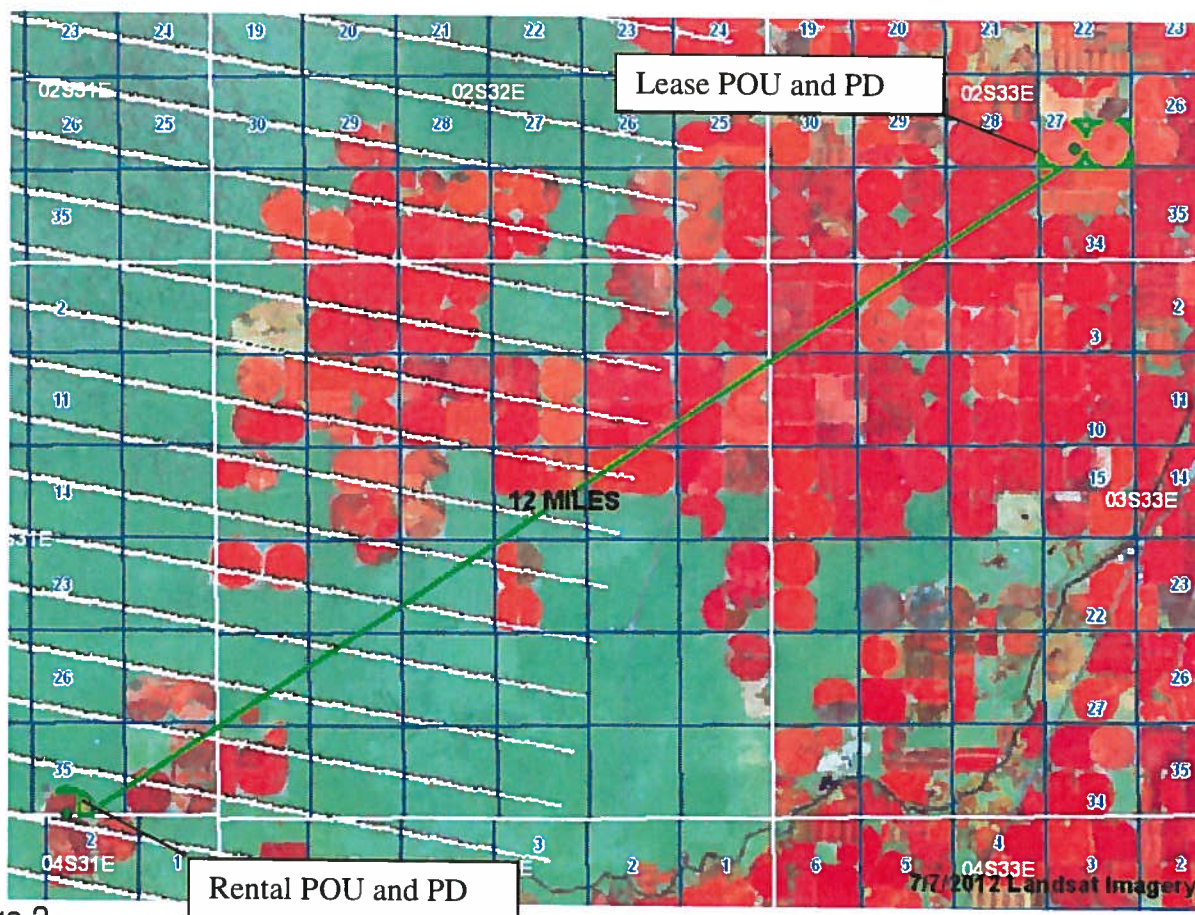


Image 2

Palmer, Cherie

From: Palmer, Cherie
Sent: Monday, July 22, 2013 3:08 PM
To: Cefalo, James
Subject: RE: WSB rental application for Lance Funk

James,

Absolutely, I will include that on the rental agreement. Thanks.

Cherie

From: Cefalo, James
Sent: Monday, July 22, 2013 3:07 PM
To: Palmer, Cherie
Subject: RE: WSB rental application for Lance Funk

Cherie,

I am not opposed to the rental as long as it is only for one year and provided the irrigation of the BLM ground does not continue past 2013. I would like a condition stating that irrigation of the BLM ground in 2014 will constitute a water right violation.

James

From: Palmer, Cherie
Sent: Monday, July 22, 2013 2:16 PM
To: Cefalo, James
Subject: WSB rental application for Lance Funk

Hi James,

I have attached a review memo of a rental for Lance Funk. Apparently, the rental POU Funk is irrigating belongs to the BLM and has been irrigating it without a water right for some time. This one has probably been on your radar but I wanted to make sure I get any concerns with the rental documented. Thanks.

<< File: L2.8 Rental Review Memorandum.docx >>

Cherie

Whitney, Rob

From: Audrey Barzee [abarzee@co.bingham.id.us]
Sent: Friday, November 16, 2012 1:34 PM
To: Whitney, Rob
Attachments: curtis.pdf

Here is the plat map, sorry it took so long but when I looked at the map it showed that Richard & Myrna Winberg are buying this property on contract from Kenneth & Djon Talbot and our records didn't show the contract so we had to look into this but the Winberg's are buying it on contract.

Thank you,

Audrey Barzee
Bingham County Assessor
Database Records Specialist
208-782-3020

S 00. 02 E 5280. 00

NO OWNERS

DAVID A & BARBARA A DANIELS WD 9-11-78 243448 T-16231		KENNETH S & DJON TALBOT % RICHARD C & MYRNA WINBERG WD 4-29-65 114787 AMEND SALE CONT 12-15-89 385940 WD 2-12-85 330874	
KENNETH TALBOT TTEE 12-14-87 367140 Rev. 12-14-87 Rev. 12-14-87	WILLIAM & SHAROL COON WD 3-17- 405223 WD 10-30-91 402284 T-9951	Filed of 5/29/87	

S 89. 46 E 729. 30



United States Department of the Interior
BUREAU OF LAND MANAGEMENT
Upper Snake Field Office
1405 Hollipark Drive
Idaho Falls, Idaho 83401
(208) 524-7500



RECEIVED

APR 22 2013

DEPARTMENT OF
WATER RESOURCES

In Reply Refer To:
IDI-37447

April 17, 2013

Richard Winberg
Myrna Winberg
1027 S 2600 W
Aberdeen, Idaho 83210

Dear Mr. and Mrs. Winberg:

Enclosed is your copy of the signed trespass resolution regarding the water, cultivating, and harvesting of agricultural crops on approximately 30 acres of public lands in Bingham County: SE1/4 and the SW1/4 section 35, T. 3 S., R. 36 E., and a portion of SW1/4NE1/4 of section 4, T. 1 S., R. 36 E., Boise Meridian, Idaho.

We will contact you this fall regarding the seeding and rehabilitation of the 30 acres. We appreciate your cooperation. Please contact Becky Lazdauskas at 208-524-7521 or me at 208-524-7555 if you have further questions or concerns.

Sincerely,

Jeremy Casterson
Field Manager

cc:

Fred Price, BLM Water Right Specialist
Robert B. Whitney, IDWR Water Compliance Bureau



United States Department of the Interior
BUREAU OF LAND MANAGEMENT

Upper Snake Field Office
1405 Hollipark Drive
Idaho Falls, Idaho 83401
(208) 524-7500



In Reply Refer To:
IDI-37447

February 19, 2013

BUREAU OF LAND MANAGEMENT
RECEIVED

CERTIFIED MAIL 7009 2250 0003 8294 8720
RETURN RECEIPT REQUESTED

APR 17 2013

Idaho Falls District
Upper Snake Field Office

Richard Winberg
Myrna Winberg
1027 S 2600 W
Aberdeen, Idaho 83210

Re: Negotiated Trespass Resolution Agreement

Dear Mr. and Mrs. Winberg:

We appreciate you coming to our office to meet on January 15, 2013. As you know, on January 8, 2013, under serial number IDI-37447, the United States of America, through the Bureau of Land Management, initiated trespass proceedings against you pursuant to Title 43 CFR Part 2800 under the authority of the Federal Land Policy Management Act of 1976 (43 U.S.C. 1701 et seq.) for certain unauthorized development generally described as watering, cultivating, and harvesting agricultural crops on approximately 30 acres of public lands in Bingham County: SE1/4 and the SW1/4 section 35, T. 3 S., R. 36 E., and a portion of SW1/4NE1/4 of section 4, T. 1 S., R. 36 E., Boise Meridian, Idaho.

As we discussed, you do not have a valid water right for a place of use on the above described public land. We reviewed documentation from 1999 where you had filed an application to transfer your water right off of the BLM at this location. The BLM wrote a letter to the Idaho Department of Water Resources on December 8, 1999, expressing our concurrence with the transfer which would result "in the discontinuance of water being applied to federal public land". We also discussed that it is against policy in the Idaho Falls District to authorize new permits for agricultural purposes.

Please review the following and if you concur, sign and date, and return the letter for final approval.

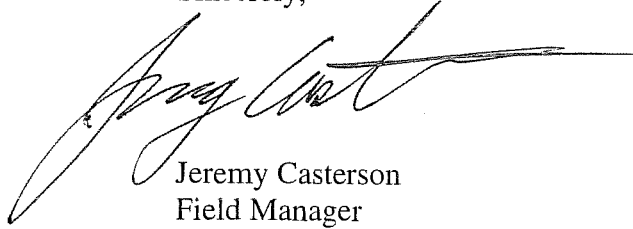
To allow time for you to notify your lessee and move pivot facilities to accommodate the change, you will be allowed this season of use on the above describe land. At the end of the season, watering and cultivating public land will cease. In the fall of 2013, rehabilitation of the federal land would begin which includes planting native seed and treatment of weeds as necessary. Our office will work with you to determine the type and method of seeding that is required.

You will be responsible for coordination and compliance with State water law through the Idaho Department of Water Resources. If you are found at any time to be in violation of this agreement, the resolution may be modified and penalties applied.

Once the measures identified in this letter are complete and the vegetation has been reestablished, trespass casfile, IDI-37447, will be closed and the trespass would be officially resolved.

Once we receive the signed copy from you, I will sign and copy of the letter will be mailed to you. Thank you for your cooperation on this matter. If you have questions or concerns, please contact Becky Lazdauskas at 208-524-7521 or me at 208-524-7555.

Sincerely,

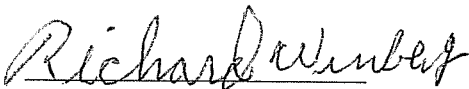


Jeremy Casterson
Field Manager

cc:

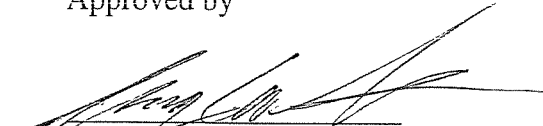
Fred Price, BLM Water Right Specialist
Robert B. Whitney, IDWR Water Compliance Bureau

We concur:

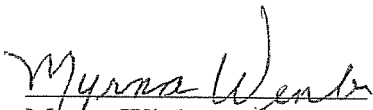


Richard Winberg

Approved by



Field Manager



Myrna Winberg

Date:

4/17/13

Date:

March 6, 2013

Whitney, Rob

From: Price, Fredric [fwprice@blm.gov]
Sent: Tuesday, April 02, 2013 9:47 AM
To: Whitney, Rob
Subject: Re: Winberg Trespass

I left a message with Brian Patton (Acting Water Bank Administrator) about what the rental situation is in B35. I seem to remember that James Cefalo (IDWR Eastern) thought Winberg might have some water he could offer to the Bank, but I'm concerned that Winberg might not actually do what he needs to do in order to stay out of trouble with BLM and IDWR.

On Tue, Apr 2, 2013 at 9:39 AM, Whitney, Rob <Rob.Whitney@idwr.idaho.gov> wrote:

Fred,

Thanks for this info. I will look into this and get back to you ASAP. RW

From: Price, Fredric [mailto:fwprice@blm.gov]
Sent: Tuesday, April 02, 2013 9:17 AM
To: Whitney, Rob
Subject: Re: Winberg Trespass

Rob,

RE: 35-02209A, 35-04047A, Winberg

Unauthorized Water Use: T03S, R31E, S35, NESW, SWSE

Trespass #IDI-037447

Our Field Office initiated a trespass proceeding (IDI-037447) against Winberg on 01-08-13 and had a meeting with the Winbergs on 01-15-13. BLM provided a Consent Letter on 12-08-99 to allow the transfer of water off of public land which was supposed to result in the discontinuance of any water use on public land.

The resolution discussed at the meeting was that Winberg must vacate public land and discontinue farming. Winbergs have a lessee, so BLM would give them to the fall of 2013 to modify their pivot, **provided** they: (1) sign the trespass resolution agreement (sent 02-19-13); (2) rehab the land in fall of 2013; **AND (3) are in compliance** with State law on any water use during 2013 irrigation season.

The only way that I can think of where Winberg could acquire temporary water in 2013 would be from the Water Supply Bank, however it is my understanding that a 2,000 acre violator in B35 has rented all the water in

the Bank within B35. I don't think my Field Office is aware of this. Does Winberg have any unused water that he could lease to the Water Bank to fulfill a rental on public land? If there is a way to rent water, then BLM initiates the rental application and Winberg would provide the check for the rental. If there is no way to rent water, then I'll notify our Field Office that they will have to modify the resolution to preclude irrigated agricultural use.

Fred Price

Water Rights Specialist

BLM, Idaho State Office

On Mon, Apr 1, 2013 at 2:58 PM, Whitney, Rob <Rob.Whitney@idwr.idaho.gov> wrote:

Fred,

Do you have any updates on the Winberg issue? IDWR will be conducting a site inspection in the near future to determine if Winberg has modified his irrigation system to avoid irrigating BLM lands.

Thanks, RW