

MEMORANDUM

To: Water Right File No(s). 35-2824

From: Cherie Palmer

Date: June 18, 2013

Re: Review of Applications to Lease Water Rights to the State Water Supply Bank and Review of Application to Rent Water Right from the WSB

PURPOSE/NARRATIVE: On April 4, 2013, the Department received an application to lease water right 35-2824 into the bank for two years. An accompanying application for rental for the Funks was submitted at the same time that proposes to use 35-2824 at a location downstream 30 miles. This package was filed because a transfer was filed, 78441, to permanently change the POU from the Hunter's property to the Funk's but, a protest was filed. The applicant intends to move forward with what the transfer is proposing, using the bank as a vehicle. Please see the injury section below for more information.

In April, the lease application was denied because water right 35-2824 was found to be supplemental and the way the application was drafted would result in an enlargement. On June 6, 2013, the applicant re-submitted the lease/rental package with 41 acres of primary water under 35-2824. The new application is for one year only.

AUTHORITY TO FILE: The applications were signed by the right holder.

WATER RIGHT VALIDITY: This water right was decreed on 4/2/2012 and forfeiture is not an issue. The extent of use under this right is questionable and has been addressed by Greg Sullivan and found that 41 acres are primary. My review has confirmed that 41 acres of primary acres is a reasonable conclusion.

INJURY TO OTHER WATER RIGHTS: This lease/rental package was filed because a transfer was filed, 78441, to permanently change the POU pursuant to the lease/rental package but, a protest was filed by Idaho Power and Surface Water Coalition. Ultimately, Idaho Power didn't have problem with the rental/lease but, the Surface Water Coalition had concerns with moving the water from outside of the Trust Water boundary into the Trust Water Boundary. They felt further analysis should be done. In the end, the transfer was withdrawn, making any protest a dead issue. The Department has reviewed the application for injury and concludes that moving water around the Trust Water boundary will not cause injury...see the enlargement section of this memo.

ENLARGEMENT OF USE: Brockway conducted an analysis in order to address possible enlargement when moving this water right across grid cells in the ESPA. The results, which I have confirmed, indicate that no mitigation is necessary for the proposed transaction. Additionally, the right has proven that 41 acres of 35-2824 can be considered primary. The applicant will lease in the full extent of right 35-2824 but will only be able to rent out 41 acres.

LOCAL PUBLIC INTEREST: NA

BENEFICIAL USE/CONSERVATION OF WATER RESOURCES: NA

DEPARTMENT STAFF OR WATERMASTER COMMENTS: As long as the applicant withdrew his application for transfer 78441, the watermaster did not have a problem with the approval of this rental for one year. The transfer was withdrawn on 6/21/13 (copy attached).

Palmer, Cherie

From: Skaggs, Pam
Sent: Thursday, April 25, 2013 9:25 AM
To: Palmer, Cherie
Subject: Kip Hunter Lease & Lance Funk Rental
Attachments: FW: Scan- Contract of Agreement

Cherie,

This is an agreement between the right holder & the rental applicant. Lance has offered this agreement for other rentals & John Homan found it acceptable. It means that the lessor has been paid & we will only charge the 10% administrative fee. Note that it is only for the 2013 season if the rental application is for a longer period (show entire fee on rental if multiple years). Add the attached email & document to the file.

Add the Come see me If you have any questions.

Pam

Pam Skaggs
WR Supervisor
287-4951

Palmer, Cherie

From: Greg Sullivan [greg.sullivan@brockwayeng.com]
Sent: Thursday, June 06, 2013 9:34 AM
To: Palmer, Cherie
Subject: FW: Funk 121 Acre (Hunter) Water Right Transfer

Cherie,

Will the correspondence below be sufficient for the Water Bank to process the 41.0 acre rental for Lance Funk from the Kip Hunter water right 35-2824 in regard to the Surface Water Coalition protestant stance?

Greg Sullivan
Brockway Engineering
2016 N. Washington St. Suite 4
Twin Falls, Id 83301
208-736-8543

From: Paul Arrington [mailto:pla@idahowaters.com]
Sent: Wednesday, June 05, 2013 4:56 PM
To: Rob Harris; John Simpson; Travis Thompson
Cc: lance@funkfarms.net; Greg Sullivan (greg.sullivan@brockwayeng.com); Paul Arrington
Subject: RE: Funk 121 Acre (Hunter) Water Right Transfer

Rob:

The Surface Water Coalition is OK with the plan outlined below. As we understand, Lance will rent 41 acres from the bank this year, leaving 80 acres worth of water in the ground. Then, the transfer will be withdrawn.

I talked with John, who represents Idaho Power in this protest. Idaho Power's protest is based on the Trust Water Line and what impacts may result from the Transfer. That must be considered in the transfer. Idaho Power believes that this should also be considered in the water supply bank process. On the surface, John is not sure there is any problem here, but you should speak with him further on this matter.

Paul L. Arrington
Barker Rosholt & Simpson LLP
(208) 733-0700 - telephone
(208) 404-9436 - mobile

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From: Rob Harris [mailto:rharris@holdenlegal.com]
Sent: Monday, June 03, 2013 12:16 PM
To: Paul Arrington; John Simpson
Cc: lance@funkfarms.net; Greg Sullivan (greg.sullivan@brockwayeng.com)
Subject: Funk 121 Acre (Hunter) Water Right Transfer

Paul and John:

A few months ago, your clients protested a water right transfer filed by Lance Funk to move the "Hunter" water right (121 acres). We have also filed a water bank rental to cover the acres for this year once the protests were received to cover planned farmed acres for this year. The transfer was based upon the fact that there had been prior water bank

approvals for this water right, and we did not perceive any major concern from IDWR regarding the transfer or the water bank rental because of their prior water bank approval.

At this point, however, we are at odds with IDWR over the water bank rental and how it should be approved based on their processing standards. For this year, they are willing to allow the irrigation of 41 acres if the entire 121 acre Hunter water right is placed in the water supply bank (meaning that the remaining 80 acres will not be used for irrigation anywhere else). We need to get the crops planted, and at this point, intend to agree to the 41 acres. IDWR has also said that it would like your consent to this water bank approval, which we are asking for in this email. In exchange for that consent, we intend to withdraw the transfer.

Please email me as soon as possible and let me know if you will consent to the water bank rental for this year.

Thanks,



Robert L. Harris
HOLDEN, KIDWELL, HAHN & CRAPO, PLLC
1000 Riverwalk Drive, Suite 200
P.O. Box 50130
Idaho Falls, ID 83405-0130
Phone: (208) 523-0620
Fax: (208) 523-9518
E-Mail: rharris@holdenlegal.com

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I/We, Lance Funk and Lisa Funk
(Applicant's Printed Name) (Applicant's Printed Name)

hereby withdraw our Application for Transfer No. 78441 of Water Right

Signed this 21st day of June, 20 13

Robert L. Lannis, ATTORNEY FOR APPLICANTS
(Signature/Title of Applicant)

(Signature/Title of Applicant)

(Signature/Title of Applicant)

(Signature/Title of Applicant)