

Van Bussum, Monica

From: Zach Latham [zach.latham@brockwayeng.com]
Sent: Wednesday, October 03, 2012 4:08 PM
To: Van Bussum, Monica
Cc: Greg Sullivan; Yenter, Cindy
Subject: RE: Garner WSB Applications; WR#s 36-2381A and 36-12043

Monica-

Thanks for the analysis and reply. We request that you continue processing these water supply bank applications. Please let me know if there's any additional information needed for approval.

Zach Latham

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From: Van Bussum, Monica [mailto:Monica.VanBussum@idwr.idaho.gov]
Sent: Wednesday, October 03, 2012 3:52 PM
To: Zach Latham
Cc: Greg Sullivan; Yenter, Cindy
Subject: RE: Garner WSB Applications; WR#s 36-2381A and 36-12043

Hi Zach,

Thanks for the extra time to look over the Garner applications. It took us a while and many email and phone conversations, but I think Cindy and I have found a way forward and we certainly appreciate your patience. It's probably best to view this as a timeline.

First, the timeline for the water rights (using my letter of July 21, 2011, as reference). In that letter, I mentioned that I reviewed the imagery associated with the acres to be leased and found:

- 2000 – aerial imagery does not support irrigation of the pivot corners
- 2001 – aerial imagery does not support irrigation of the pivot corners
- 2002 – aerial imagery does not support irrigation of the pivot corners
- 2003 – aerial imagery does not support irrigation of the pivot corners
- 2004 – 38.8 acres of pivot corners accepted as mitigation for the Magic Valley Ground Water Irrigation District mitigation plan
- 2005 – aerial imagery does not support irrigation of the pivot corners
- 2006 – 38.8 acres of pivot corners accepted as mitigation for the MVGWID mitigation plan
- 2007 – aerial imagery does not support irrigation of the pivot corners
- 2008 – aerial imagery does not support irrigation of the pivot corners

Second, an abbreviated timeline for Bank filings:

- 12.24.08 – Initial applications filed (no action by IDWR)
- 8.23.10 – Amended applications filed, replaced original filing

- 7.21.11 – Leases denied because of no evidence of beneficial use. Letter invites re-application with evidence.
- 9.13.11 – Email discussions between Monica and Zach – can evidence be submitted along with copies of original applications? Yes.
- 9.19.11 – Copies of original applications received with crop reports and FSA maps submitted evidencing 38.8 acres of irrigation 2005.
- 12.16.11 – Email from Monica to Zach, requests tabular acreage, POA, new map.
- 1.24.12 – Amended applications received.

We believe IDWR acted correctly in denying the applications filed in 2010 because no proof of beneficial use was provided at that time. The information submitted in September 2011 was essentially a copy of the 2010 application, but should have been treated as a new 2011 application. The applications received in January 2012 should have been considered amendments of the September 2011 filing.

We view the documents submitted September 19, 2011, as evidence of beneficial use as acceptable to support irrigation in 2005. Irrigation in 2005 would have restarted the forfeiture clock. Years of non-use would now be 2007, 2008, 2009 and 2010. If we accept the 2011 applications, the acres would be considered protected from forfeiture that year. There would now be four years of non-use for those acres and any release of those acres from the Water Supply Bank should be accompanied by a plan for immediate use. Lease acceptances would begin September 19, 2011, and run for five irrigation seasons (through December 31, 2016).

I'm assuming you'll want me to process approvals on these. Please confirm, though, and please call or email if you have questions.

Monica

MONICA VAN BUSSUM

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From: Zach Latham [<mailto:zach.latham@brockwayeng.com>]
Sent: Tuesday, September 18, 2012 2:09 PM
To: Van Bussum, Monica
Cc: 'Greg Sullivan'
Subject: Garner WSB Applications

Monica-

We received your August 31st 2012 denial letter for the Garner WSB applications. I would like to call and discuss this denial with you because in my opinion, we the applicant met the burden of proof by submitting evidence of beneficial use as requested by the WSB (September 19th 2011 email) in September of 2011 based on the 2008 and amended 2010 applications. This application with proof of use was not processed by the WSB, why?

It was not until February of 2012 when Dan Nelson required they be amended an additional time due to the discharge rate calculations that differed from his preferred method. WSB applications had been accepted numerous times by IDWR using a differing flow rate calculation method to that of Mr. Nelson's. He also required the re-signed applications

to be submitted to the WSB within a un-realistically short 13 day window, in spite of a lack of processing for 7 months prior, and a complete absence of processing by IDWR between the original submittal date of December 24th 2008 and August 19th 2010. When we corresponded with Mr. Nelson on February 21st 2012 to advise him that we were working with our client to attain an amended application in a timely manner, he went ahead and recommended these applications for denial anyways. How can IDWR hold an applicant to such a un-realistically short turn-around time window when IDWR itself couldn't seem to pick up the application in a year and a half and couldn't process it after proof of use had been submitted?

Please call ASAP to discuss, thanks for your time.

Zach Latham

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