

MEMORANDUM

To: File(s) 37-2627D

From: Monica Van Bussum

Date: October 10, 2012

Re: Review of Application to Rent Water from the State Water Supply Bank

PURPOSE/NARRATIVE: Jim Speck, attorney for the applicants, contacted us several weeks ago about this application. We were initially reluctant to approve it because these types of applications are becoming more frequent and the impacts and potential injury increase with the increasing frequency and magnitude of applications like this where the leased POD/POU is so far from the proposed rental POU/POD. However, Jim assures us this rental is for a short term and will not be subject to renewal. Also, this rental allows the renter to plant and establish vegetation after filling in a pond and there are benefits to that, as well (see my email exchange with Jim Speck, attached, for a discussion of the benefits and negotiated terms of this rental).

AUTHORITY TO FILE: The renters signed the application and it was filed by Jim Speck of Speck & Aanestad.

WATER RIGHT VALIDITY: The right has been in the Bank for some time and has been used to satisfy other rentals.

INJURY TO OTHER WATER RIGHTS: We did have some concerns with injury in the area, given the lease and rental POD/POUs are so far apart and this reach of the Big Wood is an affluent stream. However, the benefits of this rental and the fact that it is short-term reduces the risk of injury and benefit to the river must be considered.

ENLARGEMENT OF USE: No enlargement is apparent.

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:

None.

Van Bussum, Monica

From: Van Bussum, Monica
Sent: Friday, September 28, 2012 8:50 AM
To: 'Jim Speck'
Cc: 'Dick Spalding'; 'Helen M Spalding'; deborah@pioneerlanduseconsulting.com; Keen, Shelley; Merritt, Allen; Peppersack, Jeff
Subject: RE: RE: RE: Signature Page water rental application

Hi Jim,

That is acceptable to the Department.

Monica

-----Original Message-----

From: Jim Speck [mailto:jim@speckandaanestad.com]
Sent: Thursday, September 27, 2012 6:03 PM
To: Van Bussum, Monica
Cc: 'Dick Spalding'; 'Helen M Spalding'; deborah@pioneerlanduseconsulting.com; Keen, Shelley; Merritt, Allen; Peppersack, Jeff
Subject: RE: RE: RE: Signature Page water rental application

Monica,

The restoration process will require at least 2 growing seasons per the attached Riparian Restoration Plan (see p.4). However, it's likely irrigation would not start until mid to late summer next year. We have also taken a harder look at the area of restoration only that needs this 2 years of irrigation and conclude it is approximately 22,000 sq.ft., so we can reduce the amount of water we need to rent each year for those 2 years from the 1.0 acre in the application. The restoration process cannot be completed with only one year of irrigation. Please let me know as soon as you can if these parameters are acceptable for the rental agreement. Thank you.

Jim

-----Original Message-----

From: Van Bussum, Monica
Sent: Thursday, September 27, 2012 11:29 AM
To: Jim Speck
Cc: Dick Spalding; Helen M Spalding; deborah@pioneerlanduseconsulting.com; Keen, Shelley; Merritt, Allen; Peppersack, Jeff

Hi Jim,

Thanks again for the opportunity to get together with Allen, Shelley, and Jeff to discuss this in more detail. The document you sent was very helpful and added another dimension to our previous conversations.

The Department is willing to commence processing this application. We would have some provisions upon approval, namely limiting the rental term to one year without the possibility of renewal. We feel there is benefit to approving an application of this nature. First, of course, it would be for a limited, finite period of time. Second, filling in the pond would reduce the consumptive use from this pond. Additionally, establishing vegetation on the ground reduces future soil erosion.

Approving applications of this nature meets the purposes of the Bank perhaps better than ongoing transactions where a transfer or something more permanent should occur.

Please submit a map with the application showing 1) the proposed irrigation POU for the rental and 2) the ongoing irrigation under the domestic exempt right. This will help the Department and watermaster administer the rental and the ongoing exempt irrigation.

Please call or email if you have questions.

Monica

-----Original Message-----

From: Jim Speck [mailto:jimspeck@cox-internet.com]

Sent: Monday, September 24, 2012 11:53 AM

To: Van Bussum, Monica

Cc: 'Dick Spalding'; 'Helen M Spalding'; deborah@pioneerlanduseconsulting.com; Keen, Shelley; Merritt, Allen; Peppersack, Jeff

Subject: RE: RE: Signature Page water rental application

Monica,

Is the Department willing to at least commence the processing of this application? Attached is a copy of the recently issued Findings of Fact, Conclusions of Law & Decision issued by Blaine County on my clients' application for the County's Floodplain Conditional Use Permit. Note in particular the several findings relating to the County's local public interest policy based on the elimination of a pond filled with water from the Big Wood River without a water right. The WSB rental is to be used solely for the restoration of wetlands disturbed during the removal of the pond and filling in of the former pond site and will be terminated once the restoration is complete. I believe this distinguishes it from other WSB rental applications that irrigate permanent landscaping and should be considered accordingly.

Please get back to me as soon as possible. Thank you.

Jim

-----Original Message-----

From: Van Bussum, Monica

Sent: Friday, September 21, 2012 1:27 AM

To: Jim Speck

Cc: Dick Spalding; Helen M Spalding; deborah@pioneerlanduseconsulting.com; Keen, Shelley

Hi Jim,

Thanks for allowing me the time to get Allen, Jeff and Shelley together to discuss this. We had a prolonged and productive conversation yesterday that covered a range of topics from recent transfer applications in Basin 37 to hydrology of the area. We in particular discussed Application for Transfer 75177. The applicant filed to move water upstream a considerable distance in Basin 37. That application, as you know, was heavily protested before it was withdrawn. The concerns raised included the potential for injury to the Idaho Water Resource Board's minimum streamflow rights and the potential for injury to rightholders in the area. The Spaldings' application seeks to move water in a similar manner and the

Department must review their forthcoming application in light of that protested application, among others.

You would be correct in pointing out that we have allowed this type of Bank transaction where water has moved from the down-valley to the up-valley direction (whether ground water or surface water) and have granted those since they have been small and transient. However, we are concerned that applications for these types of transactions are becoming repeated and more frequent. Additionally, no one has shown there would be no injury to other rightholders by such a move (pardon the double negative). The injury would of course be miniscule, but real, if it occurred, but the Bank must protect against injury to other rightholders. Also, having these applications become repeated and more frequent means the total impacts are no longer likely to be insignificant.

Taking this reasoning into account, the Department likely would not approve the Spaldings' Bank rental application.

Monica

-----Original Message-----

From: Van Bussum, Monica

Sent: Monday, September 17, 2012 8:44 AM

To: 'Jim Speck'

Cc: 'Dick Spalding'; 'Helen M Spalding'; deborah@pioneerlanduseconsulting.com

Subject: RE: RE: RE: Signature Page water rental application

Hi Jim,

I did have a chance to speak with Allen. However, Allen also wishes to speak with Jeff Peppersack and Shelley Keen about these types of rentals. I have been able to schedule a meeting among the 4 of us for Wednesday afternoon. I'll get back with you as soon as that meeting happens.

Monica

-----Original Message-----

From: Jim Speck [mailto:jimspeck@cox-internet.com]

Sent: Sunday, September 16, 2012 5:28 AM

To: Van Bussum, Monica

Cc: 'Dick Spalding'; 'Helen M Spalding'; deborah@pioneerlanduseconsulting.com

Subject: RE: RE: RE: Signature Page water rental application

Monica,

Have you spoken to Allen about this rental application? Please get back to me as soon as you can so my clients can complete their due diligence in order to purchase the property.

Thank you.

Jim

-----Original Message-----

From: Van Bussum, Monica

Sent: Wednesday, September 05, 2012 11:05 AM

To: Jim Speck

Cc: Dick Spalding; Helen M Spalding

Thanks, Jim. I suspected it was already in place but wanted to confirm.

I've put a reminder on my calendar to call Allen on the 10th. I'll get back to you as soon as I speak with him.

Monica

-----Original Message-----

From: Jim Speck [mailto:jim@speckandaanestad.com]
Sent: Wednesday, September 05, 2012 11:01 AM
To: Van Bussum, Monica
Cc: Dick Spalding; Helen M Spalding
Subject: RE: RE: Signature Page water rental application

Monica,

The well that will be used to divert the rented water right already exists on the property my clients have under contract to purchase. I certainly understand your desire to speak to Allen. Please let me know right away if he raises any new concerns that would prevent you from approving this application. Thank you.

Jim

-----Original Message-----

From: Van Bussum, Monica
Sent: Wednesday, September 05, 2012 10:38 AM
To: Jim Speck

Hi Jim,

Thanks for sending me everything. And please send the original Water Supply Bank rental application at your earliest convenience. I had the chance to look at it this morning and spoke with Benny Walker at Southern about it, as well. Allen Merritt, who I'm sure you know, has been especially interested in rentals like this, and somewhat reluctant to approve these unless they are small and for a limited period, which this certainly is. However, before approving this I really need to speak with Allen. It's been some time since he and I spoke about these types of situations and I'd like to consult with him to see if he's still of the same opinion. Unfortunately, he is out of the office until the 10th. I have sent him an email with a full explanation, and an example of when we've approved such rentals in the past.

I do have one question in the meantime. Do the Spaldings already have a well in place? The application says they are going to use a domestic well, but I'd like to confirm the well is already in place.

Thanks, Jim.

Monica

-----Original Message-----

From: Jim Speck [mailto:jim@speckandaanestad.com]
Sent: Tuesday, September 04, 2012 2:16 PM
To: Van Bussum, Monica
Cc: Dick Spalding; Helen M Spalding
Subject: FW: Signature Page water rental application

Monica,

Attached is the signature page for the Application as signed by both of my clients.

Jim

-----Original Message-----

From: Maria Chapital
Sent: Tuesday, September 04, 2012 2:03 PM
To: Jim Speck
Cc: (helenmspalding@gmail.com); Dick Spalding

Hello Jim,

On behalf of Dick Spalding, enclosed is the fully-executed signature page.

Kind regards,
Maria

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