

MEMORANDUM

TO: Water Right Files 36-2381A and 36-12043
FROM: Daniel A. Nelson
DATE: February 7, 2012
SUBJECT: Gary B. and Beverly Garner Water Supply Bank Lease Application

SUMMARY

Zach Latham of Brockway Engineering filed two Water Supply Bank (WSB) leases on behalf of his clients Gary B. and Beverly Garner on December 24, 2008, and an amended application was received on August 23, 2010. A final amended version of this application was received on January 24, 2012. The lease applications request to lease a total of 42.8 acres into the WSB from 12/23/2008 to 12-23-2013 from the above water rights. Water right 36-2381A will contribute 0.37 cfs of water to irrigate 24.8 acres. Water right 36-12043 will contribute 0.25 cfs of water to irrigate 18 acres or all of this water rights. Water right 36-12043 is an expansion right of 36-2381A, these two water rights will need to remain together in the WSB process.

The LandSat aerial photography originally suggested the possibility of forfeiture of this water right, but crop records were supplied to suggest that at least some irrigation transpired in 2005. Please see my memo dated December 12, 2011.

There is some concern that approximately 2 acres are being irrigated outside of the water right border in the NWSW of Section 12, Township 7 South, Range 24 East. However, the water right that will remain on this ground does appear to supply the 2 acres with irrigation if a water right transfer to correct the place of use is filed. It appears as though the spatial data and the tabular data don't quite match properly. It may be prudent to have the applicant file the necessary paperwork to correct the spatial data for this water right.

AUTHORITY TO FILE

Both lease applications were signed by Beverly Garner, who is the co-owner of the water right. The tax lot information show that Mr. Garner is the owner of the property, therefore, Ms. Garner as a co-owner of the water right can sign for both parties.

SUFFICIENCY OF SUPPLY

There is no data to suggest that the sufficiency of water supply will be an issue.

INJURY

There is nothing to suggest that there will be any injury from leasing a portion of these water rights to the water supply bank.

ENLARGEMENT

Water right 36-12043 is an expansion water right of the original water right 36-2381A. An enlargement water right doesn't increase the diversion rate for an irrigation system, it only adds additional acres and volume. On the face of the application, it seems reasonable to lease all of the expansion water right (36-12043) and a portion of the base water right (36-2381A) as long as the diversion rate for 36-2381A exceeded the 0.25 cfs diversion rate attributed to 36-12043. Unfortunately, this is not the case when you look at the combination of both of these water rights within the irrigation system.

As the irrigation system is currently set up, the combined water rights can provide approximately 0.014 cfs per acre to irrigate 308 acres ($4.27 \text{ cfs} / 308 \text{ acres} = 0.01386363 \text{ cfs/ac}$). If we approve the lease applications, the portion that would remain on the property would no longer have a combined limitation, and would be able to apply the full rate per acre for water right 36-2381A of 0.015 cfs per acre to irrigate the remaining 265.2 acres ($4.27 / 290 = 0.14724138 \text{ cfs/ac}$). This would result in an expansion of the water right diversion rate per acre remaining on the land that will continue to be irrigated.

Additionally, the combined limitation of these two water rights would be limited to the diversion rate of portion of water right 36-2381A being leased to the WSB. The portion being leased to the WSB from 36-2381A is 0.37 cfs [$(4.27 / 290) \times 24.8 \text{ acres} = 0.365158621 \text{ cfs}$], which will reduce the combined rate per acre for both water rights to approximately 0.008 cfs per acre ($0.37 \text{ cfs} / 42.8 \text{ acres} = 0.00864486 \text{ cfs/ac}$). Most pivots currently are designed to operate at a diversion rate of 6 gpm/ac or 0.0123368984 cfs/ac, so anything under 0.01 cfs per acre for a diversion rate would make it very difficult to rent this water right out of the WSB.

For a water right to be accepted in the WSB we must be able to rent this water right out of the WSB. This water right would also allow an enlargement of the water applied per acre on the ground remaining on the property.

BENEFICIAL USE

The purpose proposed does qualify as a beneficial use.

LOCAL PUBLIC INTEREST

There is nothing to suggest that these leases would be contrary to the Local Public Interest.

WATER DISTRICT

This area is regulated by Water District 130. The watermaster was the person that pointed out the possibility of enlargement by not splitting these water rights proportionately, and stated that she opposed this WSB lease as proposed. I have reviewed the water rights and concur with her assessment. Please see the enlargement portion above.

RECOMMENDATION

The leases have been amended several times, and there have been several issues in determining whether or not the water right is valid. I have contacted the consultant that prepared these WSB leases to determine if he wished change or alter the leases again to resolve the issues described under the enlargement portion of this memo and have not received the amended applications. He was given a deadline of February 24, 2012 to supply amended applications. Several emails were sent back and forth after that time and the February 24, 2012 deadline was extended to February 29, 2012. The Department has not received any amendments to the applications. Therefore, I recommend that these applications be rejected due to the enlargement of portion of the water rights that will remain on the property.

Nelson, Dan

From: Nelson, Dan
Sent: Tuesday, February 07, 2012 11:20 AM
To: Yenter, Cindy
Subject: Watermaster comment request
Attachments: Garner Review Memo.docx; forfeiture review memo.pdf; Garner Lease Application.pdf

Cindy,

I am working on a Water Supply Bank lease application for a Gary and Beverly Garner. They are located in Basin 36 within the borders of Water District 130. I have attached a copy of my review memo, forfeiture review memo, and the lease application. If you have any questions, please don't hesitate to ask. I will hold the application until February 21st to give you an opportunity to respond the lease application.

Thank you Cindy.

Daniel A. Nelson
Staff Hydrologist
Planning Bureau
Idaho Department of Water Resources
Telephone # (208) 287-4856
Fax (208) 287-6700 (C/O Dan Nelson)

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TO: Water Right Files 36-2381A and 36-12043
FROM: Daniel A. Nelson
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DRAFT

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The LandSat aerial photography originally suggested the possibility of forfeiture of this water right, but crop records were supplied to suggest that at least some irrigation transpired in 2005. Please see my memo dated December 12, 2011.

There is some concern that approximately 2 acres are being irrigated outside of the water right border in the NWSW of Section 12, Township 7 South, Range 24 East. However, the water right that will remain on this ground does appear to supply the 2 acres with irrigation. It appears as though the spatial data and the tabular data don't quite match properly. It may be prudent to have the applicant file the necessary paperwork to correct the spatial data for this water right.

AUTHORITY TO FILE

Both lease applications were signed by Beverly Garner, who is the co-owner of the water right. The tax lot information show that Mr. Garner is the owner of the property, therefore, Ms. Garner as a co-owner of the water right can sign for both parties.

SUFFICIENCY OF SUPPLY

There is no data to suggest that the sufficiency of water supply will be an issue.

INJURY

There is nothing to suggest that there will be any injury from leasing a portion of these water rights to the water supply bank.

ENLARGEMENT

There is no enlargement being proposed. However, these water rights will need to be leased as a single water right.

BENEFICIAL USE

The purpose proposed does qualify as a beneficial use.

LOCAL PUBLIC INTEREST

There is nothing to suggest that these leases would be contrary to the Local Public Interest.

SCANNED
MAR 05 2012

WATER DISTRICT

This area is regulated by Water District 130. The watermaster has been contacted for comments, and a reply has not yet been received.

RECOMMENDATION

These leases should be approved as described below from January 1, 2008 to December 31, 2013. Water right 36-12043 is an expansion of water right 36-2381A, so these two water rights will not be able to be separated if rented. The following conditions will need to be added to remaining portion of this water right:

WATER RIGHT 36-12043:

LEASED PORTION = 0.25 cfs – 18 acres (All of this water right is being leased to the Water Supply Bank)

Conditions:

- 1.) The lease of this right is limited to 18 acres of irrigation.
- 2.) The lease of this right is based upon an enlargement of water right No. 36-2381A.
- 3.) The combined use of the leased portions of water rights 36-2381A and 36-12043 are limited to a total rate of diversion of 0.37 cfs and 171.2 acre feet of water for the irrigation of 42.8 acres.
- 4.) This water right is subordinate to all water rights with a priority date earlier than April 12, 1994, that are not decreed as enlargements pursuant to Section 42-1426, Idaho Code. As between water rights decreed as enlargements pursuant to section 42-1426, Idaho Code, the earlier priority right is the superior right.

WATER RIGHT 36-2381A:

LEASED PORTION = 0.37 cfs – 24.8 acres

Conditions:

- 1.) The leased portion of this water right is limited to 24.8 acres.
- 2.) The lease of water right 36-12043 is an enlargement of this right pursuant to section 42-1426, Idaho Code.
- 3.) The combined use of the leased portions of water rights 36-2381A and 36-12043 are limited to a total rate of diversion of 0.37 cfs and 171.2 acre feet of water for the irrigation of 42.8 acres.

REMAINING PORTION = 3.90 cfs – 1232 af 265.2 acres

Conditions: (Whereas all of water right 36-12043 is being leased, no combined conditions are needed on the remaining portion of this water right.)

34.2381 A

	4.27 CFS	—	290 acres
Removed	<u>0.37 CFS</u>	—	<u>24.8 acres</u>
Total	3.90 CFS		265.2 Acre Remaining

36.12043

0.25 CFS	—	18 acres
<u>ALL OF Right</u>		<u>18 acres</u>
		0 acres.

When combined—

4.27 CFS — 1232 AF — 308 acres.

Removed	0.37 CFS.	171.2 AF — 42.8 acres.
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Left	3.90 CFS	1060.8 AF	265.2 acres.
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Removed combined

0.37 CFS — 171.2 AF — 42.8 Acres.

SCANNED

MAR 05 2012