

Van Bussum, Monica

From: Bruce M. Smith [BMS@msbtlaw.com]
Sent: Monday, April 23, 2012 12:25 PM
To: Spackman, Gary; Van Bussum, Monica; Vincent, Sean
Cc: Peppersack, Jeff
Subject: RE: Water Bank Rental for John McCallum

Thanks Gary. To clarify, I am interested in moving forward. I have no desire to cross examine or hear rebuttal from staff. As is customary, we try to work through issues with staff whenever they raise an issue. I just think it is important to understand the extensive discussions we had to deal with the issues. I'll forward your response to my client and will get back to you. Bruce

From: Spackman, Gary [mailto:Gary.Spackman@idwr.idaho.gov]
Sent: Monday, April 23, 2012 12:09 PM
To: Bruce M. Smith; Van Bussum, Monica; Vincent, Sean
Cc: Peppersack, Jeff
Subject: RE: Water Bank Rental for John McCallum

Bruce,

I am happy to meet if you'd like. I'm available on Tuesday morning after 10 am, all day Wednesday, and Friday after 10 am.

I'm of the opinion that a he-said/she-said discussion with staff would not be helpful nor would it be relevant. The only reason I would ask staff to attend is for context, not for cross-examination or rebuttal.

At a scheduling conference for several consolidated contested cases, the parties and I discussed the rental of water from the Water Supply Bank for a beneficial use as a possible mechanism for gathering data. The rental would allow for diversion of water for data gathering without wasting the water. Your client filed an application for water bank rental, or had one pending that was previously denied. As I understand, the water supply bank rental application proposes diversion of water from the same well that is identified as a proposed point of diversion in the ARK Properties application that is the subject of the contested case.

Staff discussed possible terms of rental with you. Because this relates to issues in a contested case, and the **rental was to have been proposed for the purpose of gathering data for the contested case hearing**, it would have been reasonable to assume that the hearing officer/director would ultimately be responsible for determining whether the proposed rental would accomplish the purpose sought. Unfortunately, the focus has shifted to an attempt to assure a multiyear authorization to divert water with minimal/marginal data gathering. In addition, the point of diversion for the water rights identified for rental are located remotely from the ARK Properties well and have little or no hydraulic relationship to the proposed ARK Properties point of diversion. Finally, if the identified water rights were rented, the ground water would be moved a greater distance than the distance proposed by an application for transfer also included in the contested case.

As I said, I'm happy to discuss the matter, but an argument that there were representations by Department staff that your client relied upon to expend money prior to application approval will not be viewed favorably. You and your client should both know that an actual approval of an application is the action that would prompt the purchase and installation of equipment.

Given the above, if you still wish to discuss face-to-face, I'm happy to meet.

Gary

From: Bruce M. Smith [mailto:BMS@msbtlaw.com]
Sent: Friday, April 20, 2012 6:20 PM
To: Bruce M. Smith; Van Bussum, Monica; Vincent, Sean; Spackman, Gary
Subject: RE: Water Bank Rental for John McCallum

All—I received a copy of Gary's April 18th letter denying the application to rent water. The letter indicates that suddenly there is no available water to rent, the monitoring plan is for undisclosed reasons insufficient, and suggests a one year rental to gather data. The inconsistencies are apparent, but more problematical is that each of these reasons for denying the application are matters that have previously been addressed with the staff. I talked to Jeff Peppersack about the problem of a one year rental and resolved that. I spoke with Monica who informed me that there were identified water rights for rent. I asked Sean if he had any comments on the monitoring plan and he had none. The letter ends with an offer to contact Gary if there are questions. There are. My client has invested a considerable sum based on IDWR representations. He requests a meeting to discuss this situation. Please let me know a time next week when we could meet. I don't know that staff is necessary but a meeting with Gary would seem appropriate. Given the seriousness of this, I have cleared my calendar pretty much for the week so almost any time is ok. Thanks Bruce

From: Bruce M. Smith

Sent: Tuesday, April 17, 2012 2:02 PM

To: 'Van Bussum, Monica'; Vincent, Sean; Gary Spackman (Gary.Spackman@idwr.idaho.gov)

Subject: Water Bank Rental for John McCallum

All—Last week I had a chance to speak with Gary about this application which has been pending since January. My client has spent a lot of money based on IDWR representations that there was water to rent, IDWR wanted data, and that we could get this processed if we just agreed to monitoring. We spent money with SPF to get a professional monitoring plan in place. Sean has imposed monitoring conditions which I have never seen on a water bank rental and appear to be little more than using the rental bank to extract monitoring information. My client agreed to it just so he could get his water bank rental completed. This effectively has the impact of improperly increasing water bank rental fees and is in my opinion inconsistent with the IDWR's responsibility to the IWRB to operate the water bank. We just went through a fee increase to keep the bank running and now the bank is being used for purposes that it was never intended to do simply because someone thinks they can get information by obstructing a rental unless they get information for wholly unrelated purposes. My client would like a meeting with IDWR to see if this can be worked out. How about Wednesday at 3:00? Bruce