

MEMORANDUM

To: File(s) 51-7027 (other rights 57-7036 and 57-7037)

From: Monica Van Bussum

Date: February 23, 2012

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

PURPOSE/NARRATIVE: On January 12, 2012, the Department received two applications to rent water from the Water Supply Bank from Marshall Becker. This application sought additional diversion rate to cover the acres already irrigated under water rights 57-7036 and 57-7037. We initially denied it in a letter dated February 27, 2012, and filed in 57-7036 and 57-7037. Upon further review, we can satisfy this rental request. See the rest of this memo and the attached email for additional details.

This is an unorthodox rental for the Bank in that it is essentially making leased right no. 51-7027 supplemental to Becker's other rights, 57-7036 and 57-7037. This would allow Becker to get the additional flow he needs to fully irrigate the acres authorized under 57-7036 and 57-7037. There has been some discussion among Department staff as to whether 57-7037 would actually be at risk of forfeiture because rental of 51-7027 may subvert pumping under 57-7037 (see attached email for a complete history of this rental proposal, as well as a discussion of potential forfeiture). However, Section 42-223(3), Idaho Code, indicates a right owner does not forfeit a water right if the owner does not need to use the water right to maintain beneficial use on their property. Additionally, all 463 acres authorized under 57-7036 and 57-7037 will continue to be irrigated. We recently had a similar case in the Water Supply Bank (37-21595 for King Hill Irrigation District) where we found that non-use of a water right would likely not have resulted in forfeiture if all the acres in the POU were being irrigated by a stacked water right.

Additionally, 57-7037 is not a candidate for protection by the Water Supply Bank because it is stacked with 57-7036 and could not be rented without enlargement. This is further support for 57-7037 not being forfeited by the Bank action.

AUTHORITY TO FILE: The applications were signed by the applicant.

WATER RIGHT VALIDITY: 51-7027 has been in the right since 2003.

INJURY TO OTHER WATER RIGHTS: No injury is apparent.

ENLARGEMENT OF USE: No enlargement is evident.

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, March 16, 2012 1:30 PM
To: Keen, Shelley; Skaggs, Pam
Subject: RE: Becker proposed Bank rental

Hi Shelley,

He is not able to apply a new application because he's in the Bruneau-Grandview GWMA. I will move forward with the rental agreement to get him supplemental water for a couple of seasons while he looks for a permanent solution. Thanks!

Monica

From: Keen, Shelley
Sent: Friday, March 16, 2012 12:15 PM
To: Skaggs, Pam
Cc: Van Bussum, Monica
Subject: RE: Becker proposed Bank rental

Pam,

I think I agree with your assessment that adding 51-7027 to the 463-acre place of use essentially replaces 57-7036 and leaves it vulnerable to forfeiture. Perhaps it should be put in the Bank.

I also agree with your assessment that the uneven rate per acre would be a problem if all three rights were employed together in one system.

When I read that the proposal was for additional rate, I thought perhaps the right being rented would have limited consumptive use. That would have been problematic because increasing the rate in an irrigation system allows for meeting peak demand of a more consumptive crop, which increases overall consumption. In this case, however, since 225 acres of irrigation are being foregone in B51, there should be no enlargement issue.

Why doesn't the owner of 57-7037 and 57-7037 file an application for a new right for the additional rate? There is no moratorium in B57, and the application filing fee will likely be cheaper than the rental fee. Let's be sure the Bank proposal isn't an end run around a protested or denied application.

Shelley

From: Skaggs, Pam
Sent: Wednesday, March 14, 2012 2:55 PM
To: Keen, Shelley
Cc: Van Bussum, Monica
Subject: RE: Becker proposed Bank rental
Importance: High

Shelley,

Do you have any concerns about this WSB proposal for additional rate? After more thought, the combination of the 3 rights in a larger parcel would probably enlarge/spread the use of two "good" rights to cover the additional acres under the acre & volume only right. I don't see any problems with the use on 463 acres except for possible non-use under 57-7036.

Pam

From: Skaggs, Pam
Sent: Monday, March 12, 2012 9:09 AM
To: Keen, Shelley
Cc: Van Bussum, Monica
Subject: FW: Becker proposed Bank rental

Shelley,

Monica is working to find a method to help this right holder find additional water for a parcel of land primarily for additional rate of diversion. She has described the rental as adding a supplemental right, but it appears that the rental will make the existing junior right obsolete on 463 acres.

10-18-1968 Irrigation Use **51-7027** 6.4 cfs 320 acres 1600.0 af (5.0 af/acre)
& Domestic Use

Proposed Rental Portion 51-7027 4.50 cfs 225 acres in 614 acres 1125.0 af

01-14-1969 Irrigation Use **57-7037** 4.76 cfs 248 acres in 614 acres 1116.0 af
~~01-16-1969 Irrigation Use **57-7036** 4.30 cfs 215 acres in 614 acres 967.5 af~~
Combined Rights **4.76 cfs** 463 acres in 614 acres 2083.5 af (4.5 af/acre)

With proposed Rental of 57-7027 **9.26 cfs 463 acres** in 614 acres **2083.5 af**

It appears to me that the renter would in effect be replacing the junior overlapping right with a senior right providing its own rate and volume. Right 57-7036 wouldn't be providing any rate, acres, or volume to the system with the rental right on the 463 acres. This right could be in danger of abandonment/forfeiture if not used for an extended rental period.

However, if the right holder wants to have 0.015 cfs/acre to irrigate the entire 614 acres under the pivot system ppu... The 3 combined rights could provide **9.26 cfs 614 acres in 614 acres 2763.0 af** (4.5 af/acre) removing the abandonment/forfeiture concern.

Your thoughts on this rental proposal would be appreciated.

Pam

From: Van Bussum, Monica
Sent: Friday, March 09, 2012 4:44 PM
To: Skaggs, Pam
Cc: Lester, Steve
Subject: Becker proposed Bank rental

Hi Pam,

At your request, I've written this email to summarize the proposal for the Marshall Becker rental in Basin 57.

Becker currently has two water rights, 57-7036 and 57-7037. Details of each are below.

57-7036
4.3 cfs
967.5 AF
614 ac (limited to 215 ac within the 614)

57-7037
4.76 cfs

1116 AF

614 ac (limited to 248 ac within the 614)

Both rights, when combined, are limited to: **4.76 cfs**, 2083.5 AF and 463 acres.

The duty of water calculates as: $4.76 \text{ cfs} / 463 \text{ ac} = 0.01 \text{ cfs/ac}$

Volume calculates as: $2083.5 \text{ AF} / 463 \text{ ac} = 4.5 \text{ AFA}$

As you see, Becker has enough volume under his existing rights but comes up short on the diversion rate. He proposes to rent water from the Bank to increase the duty of water. He proposes no additional irrigated acreage. Becker needs 4.5 cfs to bring him up to 1 inch per acre.

Becker proposes to make a primary right that has been leased to the Bank supplemental to his existing water rights. The proposal here is unorthodox but might be acceptable given this is a Bank transaction.

Water right 51-7027 has been leased to the Bank since 2003. If this proposal to make 51-7027 supplemental to Becker's existing rights through a Bank rental is acceptable, here are the details of the rental:

51-7027

4.5 cfs

1125 AF

463 ac

With the following conditions:

If in times of scarcity, the right to use 57-7036 or 57-7037 is curtailed, use of 51-7027 under this rental must cease.

This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 4.5 afa per acre at the field headgate for irrigation of the lands described above.

Right Nos. 51-7036 and 51-7037, when combined with this rental of Right No. 51-7027 shall not exceed a total diversion rate of 9.26 cfs, a total annual maximum diversion volume of 2083.5 AF at the field headgate, and the irrigation of 463 acres.

As you can see from the limiting conditions, Becker will still be limited to 4.5 AF/ac (2083.5 AF/463 ac) but it does allow the additional flow.

To summarize, Becker proposes to utilize the Bank to lease 51-7027, which was a primary right, as a supplemental right.

Monica