



State of Idaho

DEPARTMENT OF WATER RESOURCES

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C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

September 9, 2011

Holden Kidwell Hahn & Crapo P.L.L.C.
Attn: Robert L. Harris
P. O. Box 50130
Idaho Falls, ID 83405

RE: *Water Supply Bank lease applications for Water Rights File 34-618, 34-2330B, 34-7077, 34-7080B, 34-7092, 34-7121A, 34-7121B, 34-7179, 34-12376, 34-13840, and 34-13842*

Ladies Dear Mr. Harris:

I have reviewed the water rights associated with the Water Supply Bank lease listed above. Several issues were raised concerning these water rights. The main issue was the fact that the entire water right had not been irrigated prior to 2004. On August 31, 2011 you sent me an email that suggested that a couple of the water rights could not be considered for forfeiture in 2004, because the water right was decreed in the middle of the irrigation season of 2004. Another issue that was brought forth in the August 31 email was that even though the Water Supply Bank lease was filed after the irrigation season, it was filed during the calendar year of the final year to consider these acres forfeited, so 2009 should also not be considered in the forfeiture review. These issues were brought before administration, and it was determined that this suggestion was accurate.

Water rights 34-7077 and 34-13842 were decreed on June 22, 2004, or in the middle of the irrigation season in 2004. When combined, these water rights allow the irrigation of 775 of the 2124 acres allowed by the water rights listed above. There were 1,414.2 acres actually irrigated in 2004. If the 775 acres are protected against forfeiture due to the decree date, then 2,189.2 acres were either protected or actually irrigated in 2004. The water rights allow a total 2,124 acres, therefore, forfeiture should not be considered in 2004.

This leaves a total of 5 years from 2005 to 2009 that might have been considered for forfeiture. Forfeiture would be considered if the water rights were not protected by the end of 2009. The Water Supply Bank lease application was filed after the irrigation season in 2009, but it was filed prior to the end of the calendar year in 2009. The Water Supply Bank lease would protect the water right from forfeiture for the entire year, since it was filed prior to December 31, 2009.

Taking the above admissions into account, this Water Supply Bank Lease can move forward. Once I receive the Water Supply Bank lease for water right 34-618 which was omitted from original package, I can move forward with the processing of the Water Supply Bank lease. It should also be noted that water rights 34-13659 and 34-13661 are in the same permissible place of use. However, since the combined total of these water rights are only 43 acres, it is feasible that water bank leases can move forward without including these two water rights. However, the combined conditions would make more sense if all of the water rights listed in the combined water rights conditions were included in the Water Supply Bank lease package.

In order to expedite this lease as much as possible, I will contact the watermaster for Basin 34 to attain his comments on the Water Supply Bank lease while I am waiting for your submittal of the Water Supply Bank lease for water right 34-618 and possibly water rights 34-13659 and 34-13661. All we will need is the current Water Supply Bank lease form properly completed. The maps on file are sufficient. **The existing fee for Water Supply Bank leases will not be required for these lease applications, since they should have been included in the original package in 2009. Please supply the Water Supply Bank lease by no later than October 6, 2011. If we do not receive the Water Supply Bank lease for 34-618 by this date, all of the Water Supply Bank leases for this farm will be returned.** If the Water Supply Bank leases are returned, you will be able to re-file the Water Supply Bank leases, but you will be subject to the existing rules and requirements. You may want to contact me after they submitted to confirm they were received in our office on time.

Respectfully,



Daniel A. Nelson
Staff Hydrologist
Planning Bureau
Idaho Department of Water Resources
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