

MEMORANDUM

TO: Water Right Files 35-2142, 35-2382, 35-7541, 35-13059, 35-13993, 35-13995, 35-13997, and 35-13999

FROM: Cynthia Bridge Clark

DATE: February 8, 2012

SUBJECT: Richie Water Supply Bank Lease and Rental Applications

SUMMARY

On September 11, 2008, the Department received three applications to lease portions of water rights 35-2142, 35-7541, and 35-13059 to the Water Supply Bank (Bank) for an indefinite period of time. A total of 147.1 acres were offered for lease. An application to rent portions of the above referenced rights (28.5 acres) from the Bank was filed with the lease applications to authorize irrigation of acres under the same system for up to five (5) years. The rented water will be applied to 28.5 acres within an area currently irrigated by a pivot that are not authorized by a water right. The applicant's representative indicated a transfer would be pursued to authorize a permanent change in place of use. Due to processing delays, the water supply bank applications were not approved for the 2009 irrigation season.

On June 22, 2009, the Department received three applications to lease revised portions of the same rights to the bank (reduced to a total of 84 acres). A copy of the rental application originally submitted in 2008 was also included requesting rental of water for the same 28.5 acres. The rights were subsequently split in December 2009 as a result of a change in ownership. The portions retained by the applicant are reflected by water right numbers: 35-13997 (split from 35-2142), 35-13993 (split from 35-35-2382), 35-13995 (split from 35-7541), and 35-13999 (split from 35-13059).

After finding inconsistencies in the 2008 and 2009 applications and the acres described by the split rights, the applicant was asked to submit amended lease and rental applications for both the 2008 and 2009 filings. These include an application for lease of parent water right 35-2382 (received January 10, 2012) which overlaps acres offered for lease under water right 35-7541, and applications for lease and rental of the splits rights to replace/amend the applications filed in 2009 (received November 2011).

In summary, the applications filed in 2008 were approved retroactively to authorize use in 2008. The applications filed in 2009 have been approved for a five year period (2009-2013 irrigation seasons). The representative for the applicant, Mr. Jason Helms, indicated that the applicants intend to file a transfer to provide a permanent water supply to the 28.5 acres not currently covered by a water right.

Lease Approval: Two sets of lease approvals (four total) have been issued to reflect the acres offered for lease in 2008 (147.1 acres) and in 2009 (84 acres). The 2008 lease approvals are based on the original/parent water right numbers (35-2142, 35-2382, 35-7541, and 35-13059) and the 2009-2013 approvals based on the split rights.

Rental Approval: Two rental agreements have been issued to correspond with the two applications filed in 2008 and 2009: 1) Rental water for irrigation of 28.5 acres for the 2008 irrigation season; and 2) Rental of water for irrigation of 28.5 acres for the 2009 through 2013 irrigation seasons.

AUTHORITY TO FILE

The applications were filed by the applicant's representative, Jason Helms, P.E. The lease applications were signed by current water right owners John and Kaye Ritchie. The 2008 rental application was filed

by the Ritchie's prior to a change in ownership and they plan to execute the agreement. The amended 2009 rental application was filed and will be executed by the new owners, Morgan Enterprises, LLC.

WATER RIGHT VALIDITY

The referenced parent rights were decreed in the Snake River Basin Adjudication in 2002. Based on available aerial and infrared photography, the acres offered for lease were not irrigated from 2002 through 2009. Under Idaho law, a water right or portion thereof is subject to forfeiture after 5 consecutive years of non-use. Department policy provides for resumption of use in the sixth year. Therefore, absent protection from forfeiture by another process (e.g. the Water Supply Bank), use must have been resumed in 2008.

The portions of the water rights leased to the water supply bank in 2008 are protected from forfeiture pursuant to sections 42-1761 through 42-1765A, *Idaho Code*. However, upon release from the bank, immediate resumption of use may be required to maintain the validity of the rights if the rights are not beneficially used while in the bank.

Note: The acres released from the bank in 2009 (63.1 acres) may be subject to forfeiture through non-use as of the date of release (June 21, 2009).

INJURY

No injury is apparent through the proposed leases or rental.

ENLARGEMENT

No enlargement is evident through the leases or rentals alone. Rental of water under the referenced rights should comply with the existing conditions of the water rights, including combined limits.

LOCAL PUBLIC INTEREST

Staff has no information to suggest this application is inconsistent with the local public interest.

WATER DISTRICT

The referenced water rights are within the Bingham Ground Water District, and administered within water district 01 (Upper Snake River) and Water District 120. James Cefalo, Water District 120 watermaster, was notified of the applications. He is aware of the applicant's intent to file a transfer to pursue a permanent water right to authorize water use under the pivot. He had no additional comments.

BENEFICIAL USE/CONSERVATION OF WATER RESOURCES

The leases and rental appears to be consistent with conservation of water resources in Idaho.

DEPARTMENT STAFF OR WATERMASTER COMMENTS

Staff should consider whether subsequent lease or rentals should be approved in the future if the applicant does not diligently pursue a permanent water right to provide for the uses authorized under these agreements.