



State of Idaho

DEPARTMENT OF WATER RESOURCES

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C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

November 14, 2011

SPF Water Engineering LLC.
Attn: Terry M. Scanlan
300 E. Mallard Drive, Suite 350
Boise, ID 83706

RE: APPLICATION TO LEASE WATER RIGHT NOS. 45-2748, 45-2749 AND 45-7137 TO THE WATER SUPPLY BANK

Dear Mr. Scanlan:

I received your letter dated October 28, 2011, requesting the Department reconsider the Water Supply Bank lease applications for 45-2748, 45-2749 and 45-7137. Those applications were originally received by this office on June 10, 2009. We have reviewed the points made in your letter and still must view the applications as not acceptable for entry into the Bank. There are two primary reasons for this decision, which are outlined below.

The Water Supply Bank Rules (also known as IDAPA 37.02.025) provide criteria to be considered when determining whether to accept a water right into the Bank. The rules prohibit enlargement of the use of the water right. The McCain applications do not propose to reduce beneficial use of the water right upon acceptance into the Bank, but propose leasing nonconsumptive water that is realized from conservation practices. It is very difficult to protect against enlargement by renting such water, as nonconsumptive uses generally have some consumptive portion.

The rules also anticipate a proportional reduction in beneficial use upon lease of water into the Bank. The applications in question here do not propose reducing beneficial use. As you state in your letter, "McCain instituted significant conservation upgrades...in late 2007, along with aggressive in-plant water conservation measures. These upgrades have resulted in reduced diversions of groundwater. This 'saved' water is proposed for lease to the bank." This adds to the concern over enlargement of the water right upon rental because the Bank would be moving water conserved from one water right to another without any reduction in beneficial use by the leasing party (McCain).

Please note that a water right is not protected from forfeiture unless it is accepted into the Bank or unless an exception or defense to forfeiture applies as described under Idaho Code § 42-223. Based on your mention of McCain's plant upgrades and improved conservation measures, it appears the water right may be protected from forfeiture under Idaho Code § 42-223(9), which states:

No portion of any water right shall be lost or forfeited for nonuse if the nonuse results from a water conservation practice, which maintains the full beneficial use authorized by the water right, as defined in section 42-250, Idaho Code.

As I mentioned above, the applications do not propose to reduce the full beneficial use authorized by the water right, but are offering water resulting from conservation practices.

If you have any questions or concerns please contact me at the above address.

Respectfully,

A handwritten signature in black ink, reading "Monica Van Bussum". The signature is fluid and cursive, with the first name "Monica" being more prominent and the last name "Van Bussum" following in a similar style.

Monica Van Bussum
Sr. Water Resource Agent

C: Allen Merritt and Cindy Yenter – IDWR Southern Regional Office
Brian Higgs – Watermaster, Water District 140
McCain Foods USA, Attention: Dusty Galliher – P.O. Box 10; Burley, ID 83318;