

MEMORANDUM

To: Water Right File No(s). 36-8412

From: Monica Van Bussum

Date: August 29, 2011

Re: Review of Application to Lease Water Right to the State Water Supply Bank

PURPOSE/NARRATIVE: We first received this application on November 17, 2008, and returned it because the acres offered to the Bank are supplemental to A&B Irrigation District Unit B rights. However, after consultation with the right holder and with the watermaster (Cindy Yenter, Water District 130), it appears the primary rights from A&B are not being used and the 6 acres offered need some protection from forfeiture. I have conditioned the lease that the 6 acres are supplemental to A&B Unit B rights, and used the standard supplemental conditions as well. This right could only be rented to someone who already has A&B Unit B shares on the property.

AUTHORITY TO FILE: The applications were signed by Craig Hepworth, who is listed on the Idaho Secretary of State's Business Entities listing as a general partner.

WATER RIGHT VALIDITY: The acres had been in the Magic Valley Ground Water District's mitigation plan from 2004 to 2008. WMIS data from Cindy Yenter (watermaster) indicates the well has been used in the last 9 or 10 years (see attached email).

INJURY TO OTHER WATER RIGHTS: No injury is apparent.

ENLARGEMENT OF USE: No enlargement is evident through the lease alone. Proper rental review should protect against enlargement. It will be important that the renter has A&B Unit B rights to act as the primary water.

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 lease appears to be consistent with conservation of water resources in Idaho.

DEPARTMENT STAFF OR WATERMASTER COMMENTS:

The watermaster and I worked closely together in processing this lease. Part of our email exchange is attached. In short, she supports the lease.

Van Bussum, Monica

From: Yenter, Cindy
Sent: Tuesday, August 16, 2011 8:05 AM
To: Van Bussum, Monica
Subject: RE: Dalley & Idaho Acres

All of 36-8412 is supplemental to A&B, so there is a statutory defense to forfeiture. However, if the acres aren't being irrigated at all (and I think this might be the case) then the defense may not apply. Not all of the 8412 acres are stacked, there 108 which are supplemental only*. Should we maybe accept the 6 acres to prevent forfeiture, and flag them as supplemental to A&B groundwater?

*408 total ac – 300 previous lic/decreed = 108 new supplemental acres under 8412. 300-108 = 192 stacked.

From: Van Bussum, Monica
Sent: Thursday, August 11, 2011 4:02 PM
To: Yenter, Cindy
Subject: RE: Dalley & Idaho Acres

He submitted the application exactly as it had been. It's an app for 36-8412 only. 6 acres to be leased.

From: Yenter, Cindy
Sent: Wednesday, August 10, 2011 2:16 PM
To: Van Bussum, Monica
Subject: RE: Dalley & Idaho Acres

Yes, that fills in the missing pieces and is pretty consistent with what I dug up yesterday. Except that my math appears bad in this first email. Total supplemental acres should be **304**, and 92 stacked should be **192**. I think.

So was the application resubmitted? Does he desire to lease the primary or supplemental rights?

From: Van Bussum, Monica
Sent: Wednesday, August 10, 2011 1:51 PM
To: Yenter, Cindy
Subject: FW: Dalley & Idaho Acres

I found an old email about Idaho Acres. Does this help?

From: Yenter, Cindy
Sent: Wednesday, April 27, 2011 4:24 PM
To: Skaggs, Pam; Van Bussum, Monica
Cc: Merritt, Allen; Keen, Shelley
Subject: Dalley & Idaho Acres

Actually it's not the same at all. The Dalley well and the proposed rental is outside of A&B boundaries pumping in. The Idaho Acres rights are fully within A&B and they are supplemental to A&B ground water rights (not surface water. Field examiner was mistaken). Here is my analysis:

Idaho Acres owns a total of 411 acres within 8S 25E Section 9 Tract A and Section 10 Tract C. On those acres are 304 acres of appurtenant A&B senior gw rights (no enlargement rights). Within Sec 9 Tract A are 94.4 acres classified by A&B as non-irrigable, and there are no A&B rights on those acres. Non-irrigable tract acres were developed later under either A&B enlargement rights or privately held rights, or both. In this case, private right 36-2512 was licensed for 100 acres with priority 1962. 36-11110 was decreed to Idaho Acres as an enlargement right and 36-8412 was later issued with priority 1989. The latter two rights are junior to the A&B rights and were developed as supplemental rights. Additionally, there is a 92-acre licensing overlap between 36-8412 and 36-2512/11110. The three Idaho Acres rights were decreed in a PPU.

The A&B acres remain appurtenant (they are not leased off) and they are not subject to forfeiture even though they are not being used in the corners.

WMIS data indicates that the well has diverted between 150-385 AF/year for the past 9 or 10 years. Well is open discharge and using a time clock. Flow measurements are almost exactly what was measured during the field exam for 8412. I am confident in the annual volumes, and this is clearly a supplemental well.

The six acres in the pivot corners in SE Sec 9 were accepted into the IGWA mitigation plan for years 2004 and 2006 ONLY. They were not submitted for 2005 and not protected in that year. Because they were supplemental, this was probably not appropriate, but we can't go back now. because it was a very small acreage apparently we didn't do a full review or we would have picked up the supplemental comment. Consequently there are 3 years of accrued forfeiture on those pivot corners since between 2001 and 2007 (2002, 2003, 2005).

There are some shape file issues which indicate that the 408 decree acres are somewhat generous. If you count only A&B classified acres you get 398.4 acres, although the total tract is 411 acres. The wr shapes themselves are only about 400 acres. However, if you ignore that and focus just on the developmental analysis:

If:

All 100 acres from 36-2512 and 4 acres from 36-11110 were developed as primary groundwater rights (104+304 A&B = 408)

Then:

96 acres from 36-11110 and all acres under 36-8412 were developed supplemental to A&B gw rights; and

92 acres under 36-8412 are stacked on 36-2512/11110 (and by inference, 208 are not stacked and supplemental only?)

So:

6 acres from the unstacked portion of 36-8412 could be leased to the bank, conditioned as a right supplemental to A&B UNIT B rights (this needs to be specific).

No enlargement should occur so long as the acres come from the unstacked portion.

From: Skaggs, Pam

Sent: Wednesday, April 27, 2011 2:35 PM

To: Van Bussum, Monica

Cc: Yenter, Cindy
Subject: RE: Dalley rental application

This sounds remarkably like the Idaho Acres Dairy application we discussed this morning. Maybe we can resolve questions for both during our discussion tomorrow.

Pam

-----Original Appointment-----

From: Van Bussum, Monica
Sent: Wednesday, April 20, 2011 5:06 PM
To: Van Bussum, Monica; Keen, Shelley; Skaggs, Pam; Yenter, Cindy; Bromley, Chris; Conf Rm 549F - Arrowrock
Subject: Dalley rental application
When: Thursday, April 28, 2011 2:30 PM-3:30 PM (GMT-07:00) Mountain Time (US & Canada).
Where: Fish bowl

Hi folks,

Richard Dalley has applied for a rental application (as a lease/rental for 36-16127 and 36-16129) to put water on some acres he has been irrigating. We initially denied the rental application and he reapplied.

With this latest rental application, Cindy saw the need for some feedback from A&B and we need to get together on how we are going to handle this lease application in light of the response from A&B.

I have included a number of documents for your enjoyment. There is a memorandum from John Homan on the original lease application. I have included the original letter denying the rental application. There is the most recent rental application with a letter from Dalley. There is an acreage assessment from Cindy. Finally, there is the comment from A&B.

I anticipate we'll be discussing reasonable pumping levels and the A&B delivery call in conjunction with this application. Thanks!

Monica

<< File: Dalley rental app.pdf >> << File: A&B comment.pdf >> << File: Dalley acreage assessment from Cindy.pdf >> << File: Returned Rental App.pdf >> << File: Memorandum on Dalley Lease App.pdf >>