



State of Idaho

DEPARTMENT OF WATER RESOURCES

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C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

July 21, 2011

GARY B GARNER
BEVERLY GARNER
1458 N 300 E
RUPERT ID 83350

RE: APPLICATION TO LEASE WATER RIGHT NOS. 36-2381A AND 36-12043 TO THE WATER SUPPLY BANK

Dear Applicant:

On December 24, 2008, and again on August 23, 2010, the Department received your applications to lease the above-mentioned water rights to the Water Supply Bank (Bank). Water Supply Bank Rule 25 (also known as IDAPA 37.02.03.025) requires the Department to evaluate whether the water right has been lost through abandonment or forfeiture as defined by Section 42-222(2), Idaho Code. Section 42-222(2) states, in part, "All rights to the use of water acquired under this chapter or otherwise shall be lost and forfeited by a failure for the term of five (5) years to apply it to the beneficial use for which is was appropriated."

In a standard Department review, it appears there may have been more than five years of non-use associated with the pivot corners you seek to lease. It might be best if I summarize it chronologically:

- 2000 – Aerial imagery does not support irrigation of the pivot corners during this year
- 2001 – Aerial imagery does not support irrigation of the pivot corners during this year
- 2002 – Aerial imagery does not support irrigation of the pivot corners during this year
- 2003 – Aerial imagery does not support irrigation of the pivot corners during this year
- 2004 – 38.8 acres of pivot corners accepted as mitigation for the Magic Valley Ground Water Irrigation District mitigation plan
- 2005 – Aerial imagery does not support irrigation of the pivot corners during this year
- 2006 - 38.8 acres of pivot corners accepted as mitigation for the Magic Valley Ground Water Irrigation District mitigation plan
- 2007 – Aerial imagery does not support irrigation of the pivot corners during this year
- 2008 – Aerial imagery does not support irrigation of the pivot corners during this year
- December 24, 2008 – the Department received an application to lease 18.7 acres in the SW quarter of Section 12. This application would likely have been denied for non-use.
- 2009 – Aerial imagery does not support irrigation of the pivot corners during this year

If we count up the years of non-use (2000, 2001, 2002, 2003, 2005, 2007, 2008 and 2009), you see it adds up to more than five years of non-use.

Because of this evidence of more than five years of non-use, the requirements of Water Supply Bank Rule 25 can not be met and we must deny your lease applications. If you wish to apply for a lease again, please submit evidence that the water right has not undergone a five-year period of non-use.

Please contact me at (208) 287-4907 if you have any questions.

Sincerely,


for Monica Van Bussum
Sr. Water Resource Agent

C: Allen Merritt – IDWR Southern Regional Office
Zach Latham – Brockway Engineering PLLC
Cindy Yenter – Watermaster, Water District 130