

MEMORANDUM

TO: Water Right Files 37-481D, 37-482J, 37-483D, 37-577BP, 37-917, 37-11975, 37-11976, 37-11977, 37-11978, 37-2713, and 37-7356

FROM: Daniel A. Nelson

DATE: June 24, 2011

SUBJECT: Eccles Flying Hat Ranch LLC Water Supply Bank Lease Application

SUMMARY

Greg Sullivan of Brockway Engineering P.L.L.C. has filed a water bank lease application for water right 37-481D, 37-482J, 37-483D, 37-577BP, 37-917, 37-11975, 37-11976, 37-11977, 37-11978, 37-2713, and 37-7356 for Last Ranch LLC. The lease applications request to place a combination of 23 acres, in various portions from each of these water rights into the Water Supply Bank. The spits for each of these water rights are listed on a spreadsheet attached to this memo labeled **"Eccles Flying Hat Water Supply Bank Lease Distribution of Water Rights."** The changes needed for the combined conditions are listed at the end of this memo.

An earlier Water Supply Bank Lease package was submitted for these water rights, but that lease package was denied. The reason for the earlier denial was that the water right 37-577BP was a contested case in the Snake River Basin Adjudication (SRBA). Water right 37-577BP has still not been decreed, but a "Standard Form 5 – Stipulated Elements of A water Right" was submitted to the SRBA court for 37-577BP. There was and still is an issue with overlapping water right 37-20625. Water right 37-20625 has been recommended to be disallowed by SRBA staff. Eccles Flying Hat Ranch LLC objected to this recommendation. If the recommendation were to be changed, this water right would need to be included in this Water Supply Bank Lease. However, a verbal motion to withdraw the objection to 37-20625 has been submitted to the SRBA court, therefore, this water right should be decreed as a disallowed water right. Although it would be best to continue to hold these Water Supply Bank Leases until both water rights 37-577BP and 37-20625 are decreed in the SRBA, it has been determined that both of these water right recommendations should adequately reflect the partial decrees that will be issued for these water rights.

All of these water rights overlap each other, and share the same overlapping conditions. The applicant supplied a spreadsheet depicting the amount of the diversion rate they wished to remove from each water right. I then equated those diversion rate numbers to include a number of acres retired from each water right and the combined conditions related to each water right. The acres amounts and diversion rates are determined based on the 23 acres being retired is 3.85906040% of the total combined acres. Therefore, this percentage was removed from each of the water rights and the combined condition amounts. The acre amounts appear to be messy to say the least, but the conditions that combine all of the water rights together do come to a total of 23 acres. We have decided to move forward with the lease package.

AUTHORITY TO FILE

Eccles Flying Hat Ranch LLC signed a Limited Power of Attorney document that gave Brockway Engineering power of attorney to perform the necessary business to place these water rights into the Water Supply Bank.

SUFFICIENCY OF SUPPLY

There is no evidence to suggest that there is a lack of water in the Big Wood System for most of these water rights, but there are issues that may arise during the portion of the season when the Minimum Stream Flow requirements are in priority.

INJURY

There have been several protests by the Idaho Water Resource Board concerning water right transfers that move water rights upstream of the Hailey Gauge on the Big Wood River system. It appears as though these water rights are below the Hailey Gauge, so there should be a condition that requires a comment from the Idaho Water Resource Board prior to moving water upstream of its current location.

ENLARGEMENT

An enlargement has not been proposed, but any rental of these water rights will need to be done cautiously to avoid extending the delivery season on these water rights due to a longer delivery season at a new location. The Watermaster for Basin 37 is well versed in monitoring these types of situations, so it is unlikely that it will become a major issue.

BENEFICIAL USE

This is a beneficial use of the waters of Idaho.

LOCAL PUBLIC INTEREST

There is no evidence that this application is not within the local public interest.

WATER DISTRICT

The watermaster for Water District 37 has been contacted concerning these lease applications, but did not respond to my request for comment. I am therefore assuming he has no issues with these lease applications.

RECOMMENDATION

Although there are several issues with these water bank leases, it does appear as though we can move forward with the water bank lease with the inclusion of special conditions to the water bank leases. Probably the biggest issue are the splits of the acres within the water rights, so to prevent confusion, **any rental of these water rights should include all of the water rights for the full 23 acres. Any rental for less than 23 acres should not use these water rights.** In order for these Water Supply Bank lease to be approved, I recommend that the following conditions be incorporated into the water bank lease.

Water Right 37-481D Conditions for Lease:

Special Condition - When water rights 37-481D and 37-482J are combined the portion being submitted to the Water Supply Bank is limited to 15.5 acres, and the portion remaining on the property is limited to 371.5 acres.

Water Right 37-482J Conditions for Lease:

Special Condition - When water rights 37-481D and 37-482J are combined the portion being submitted to the Water Supply Bank is limited to 15.5 acres, and the portion remaining on the property is limited to 371.5 acres.

Water Right 37-483D Conditions for Lease:

Special Condition - When water rights 37-483D and 37-577BP are combined the portion being submitted to the Water Supply Bank is limited to 21 acres, and the portion remaining on the property is limited to 502 acres.

Water Right 37-577BP Conditions for Lease:

Special Condition – If the final decree issued for water right 37-577BP varies from the Standard Form 5 signed by Department Staff on May 26, 2011, the water bank leases for water rights 37-481D, 37-482J, 37-483D, 37-577BP, 37-917, 37-11975, 37-11976, 37-11977, 37-11978, 37-2713, and 37-7356 will all be rejected.

Special Condition – If the final decree issued for water right 37-20625 is not decreed as a disallowed water right the water bank leases for water rights 37-481D, 37-482J, 37-483D, 37-577BP, 37-917, 37-11975, 37-11976, 37-11977, 37-11978, 37-2713, and 37-7356 will all be rejected.

Special Condition for Remaining Portion only – A portion of Right 37-577BP, 1.40 cfs, shall continue to be diverted into the Hiawatha Canal to mitigate the removal of Rights 37-481D, 37-482J, 37-483D, 37-577BP, 37-917, 37-11975, 37-11976, 37-11977 and 37-11978 diverted into Cove Canal and Kohler Ditch under Transfer 68526 until such time as the canal ceases operation or is otherwise no longer necessary for such mitigation. The right holder retains ownership of the 1.40 cfs portion of this right diverted into the Hiawatha Canal.

Special Condition - When water rights 37-483D and 37-577BP are combined the portion being submitted to the Water Supply Bank is limited to 21 acres, and the portion remaining on the property is limited to 502 acres.

Water Right 37-917:

Special Condition – The portion of water right 37-917 being submitted to the Water Supply Bank is limited to 9.7 acres, and the portion remaining on the property is limited to 236.3 acres within the remaining permissible place of use.

Water Right 37-11975:

Special Condition - When water rights 37-11975, 37-11976, 37-11977, and 37-11978 are combined the portion being submitted to the Water Supply Bank is limited to 3 acres, and the portion remaining on the property is limited to 76 acres.

Water Right 37-11976:

Special Condition - When water rights 37-11975, 37-11976, 37-11977, and 37-11978 are combined the portion being submitted to the Water Supply Bank is limited to 3 acres, and the portion remaining on the property is limited to 76 acres.

Water Right 37-11977:

Special Condition – The portion of water right 37-11977 being submitted to the Water Supply Bank is limited to 0.8 acres, and the portion remaining on the property is limited to 19.2 acres within the remaining permissible place of use.

Special Condition - When water rights 37-11975, 37-11976, 37-11977, and 37-11978 are combined the portion being submitted to the Water Supply Bank is limited to 3 acres, and the portion remaining on the property is limited to 76 acres.

Water Right 37-11978:

Special Condition - When water rights 37-11975, 37-11976, 37-11977, and 37-11978 are combined the portion being submitted to the Water Supply Bank is limited to 3 acres, and the portion remaining on the property is limited to 76 acres.

Water Right 37-2713:

Special Condition - When water rights 37-2713 and 37-7356 are combined the portion being submitted to the Water Supply Bank is limited to 23 acres, and the portion remaining on the property is limited to 573 acres.

Water Right 37-7356:

Special Condition - When water rights 37-2713 and 37-7356 are combined the portion being submitted to the Water Supply Bank is limited to 23 acres, and the portion remaining on the property is limited to 573 acres.

Combined Conditions to be placed on all of the water rights:

Water Rights being placed into the Water Supply Bank Conditions.

Rights 37-481D, 37-482J, 37-483D, 37-577BP, 37-917, 37-11975, 37-11976, 37-11977, 37-11978, 37-2713, and 37-7356 when combined shall not exceed the irrigation of 23 acres.

Rights 37-481D, 37-482J, 37-483D, 37-577BP, 37-917, 37-11975, 37-11976, 37-11977, 37-11978, 37-

2713, and 37-7356 when applied by sprinkler system shall not exceed a maximum diversion rate of 0.46 cfs and 80.5 af at the field headgate, and when applied by surface application shall not exceed a maximum diversion rate of .092 cfs and 161.0 af at the field headgate. Any portion of these rights in excess of the maximum applied rates of diversion and volumes at the field headgate shall be limited to use for conveyance losses and shall not be diverted from the river unless required for the delivery of the applied rate of water to the field headgate.

The total instantaneous diversion of water from all points of diversion under Rights 37-481D, 37-482J, 37-483D, 37-577BP, 37-917, 37-11975, 37-11976, 37-11977, 37-11978, 37-2713 and 37-7356 when combined shall not exceed 1.03 cfs and a total annual maximum diversion volume of 161.0 af at the field headgate.

Use of water under this water right will be regulated by the watermaster of State Water District No. 37, Big Wood River.

Any of rental of the water rights from the Water Supply Bank upstream from the current point of diversion must request comments from the Idaho Water Resource Board prior to approval of the rental agreement.

Water Rights remaining on the property Conditions.

Rights 37-481D, 37-482J, 37-483D, 37-577BP, 37-917, 37-11975, 37-11976, 37-11977, 37-11978, 37-2713, and 37-7356 when combined shall not exceed the irrigation of 573 acres.

Rights 37-481D, 37-482J, 37-483D, 37-577BP, 37-917, 37-11975, 37-11976, 37-11977, 37-11978, 37-2713, and 37-7356 when applied by sprinkler system shall not exceed a maximum diversion rate of 11.46 cfs and 2005.5 af at the field headgate, and when applied by surface application shall not exceed a maximum diversion rate of 22.92 cfs and 4011.0 af at the field headgate. Any portion of these rights in excess of the maximum applied rates of diversion and volumes at the field headgate shall be limited to use for conveyance losses and shall not be diverted from the river unless required for the delivery of the applied rate of water to the field headgate.

The total instantaneous diversion of water from all points of diversion under Rights 37-481D, 37-482J, 37-483D, 37-577BP, 37-917, 37-11975, 37-11976, 37-11977, 37-11978, 37-2713 and 37-7356 when combined shall not exceed 25.71 cfs and a total annual maximum diversion volume of 4011.0 af at the field headgate.

Use of water under this water right will be regulated by the watermaster of State Water District No. 37, Big Wood River.

Eccles Flying Hat Water Supply Bank Lease Distribution of Water Rights

Total Combined Acres = 596
 Acres Being Lease to the Bank = 23
 Percent of Total Lands Being Leased = 3.85906040%

Water Right Number	Original Acre Limit	Original Diversion Rate	Original Volume	Acres Leased to Bank (Original Acres times Percentage)	Diversion Rate Leased to Bank {(Original Rate/Original Acres) * Acres Leased} in cfs	Volume Leased to Bank {(Original Volume/Original Acres) * Acres Leased} in af	Acres Remaining on property	Diversion Rate Remaining on property in cfs	Volume Remaining on Property in af
37-481D	387	3.00		14.9	0.12		372.1	2.88	
37-482J	387	3.00		14.9	0.12		372.1	2.88	
37-483D	523	3.00		20.2	0.12		502.8	2.88	
37-577BP	523	5.60		20.2	0.22		502.8	5.38	
37-917	246	2.54		9.5	0.10		236.5	2.44	
37-11975	79	3.20		3.0	0.12		76.0	3.08	
37-11976	79	0.70		3.0	0.03		76.0	0.67	
37-11977	20	0.80		0.8	0.03		19.2	0.77	
37-11978	79	3.50		3.0	0.14		76.0	3.36	
37-2713	596	10.00	2086.0	23.0	0.39	80.5	573.0	9.61	2005.5
37-7356	596	2.68	1057.8	23.0	0.10	40.8	573.0	2.58	1017.0