

MEMORANDUM

TO: Water Right File 37-20810, 37-20812, 37-20814, and 37-20816
FROM: Daniel A. Nelson
DATE: June 7, 2011
SUBJECT: The Notch Butte Farms LLC. Water Supply Bank Rental Application

SUMMARY

Greg Sullivan of Brockway Engineering filed on behalf of his client Notch Butte Farms LLC to place the same 22.2 acres from water rights 37-20810, 37-20812, 37-20814, and 37-20816 into the water supply bank for an indefinite term on October 22, 2009. Water rights 37-20810, 37-20812, and 37-20814 combine together to allow 170.9 acres of irrigation within a 195.4 acre permissible place of use. Water right 37-20816 allows the irrigation of the 195.4 acres described as the permissible place of use for the other three water rights, therefore, the permissible place of use will also need to be reduced by 22.2 acres to 173.2 acres. The applicant filed a water bank lease on all four water rights, so the 22.2 acres will need to be taken out of each water right as well as the combined conditions. Two of these water rights were decreed in December of 2003 and the other two were decreed in February of 2004.

The LanSat Satellite photos show that it has not been the practice of the owner to irrigate all 194.5 acres within the borders of the water rights on any given year. The 2005 LandSat photo suggests that approximately 190.4 acres were irrigated within the borders of the water right. The 2005 LandSat also shows that 18.1 acres were irrigated outside of the borders of the water right. Of these 18.1 acres, approximately 4.9 acres were actually farmable. It does appear as though that the full 195.4 acres described in the water right were irrigated, but a portion of that land was not described by the water rights.

An additional 13.2 acres were irrigated outside of the water rights borders on ground that doesn't appear to be farmable. The total amount of land irrigated outside of the water right borders is approximately 18.1 acres. It appears as though these 18.1 acres have been irrigated since the water right was decreed in 2001 without a water right transfer being filed. The irrigation of these 18.1 acres brings forth two significant issues. The first issue is that land was irrigated outside of the water right borders without a water right transfer being filed for at least 10 years. The second issue is that if we include these 18.1 acres onto the water right, then the acre limitation of the water rights would be exceeded. There simply is no way that we can go forward with this Water Supply Bank lease until these issues have been resolved.

AUTHORITY TO FILE

The application is in the name of Notch Butte Farms LLC, and was signed by John Lezamiz as the managing member. The Departments tax lot information does show Notch Butte Farms LLC as the owner of the property. The Secretary of State Business Search information lists John Lezamiz as a member of the corporation.

SUFFICIENCY OF SUPPLY

There is no evidence to suggest that there are not any issues with the sufficiency of water for this water bank lease.

INJURY

There is evidence to suggest that the full water right was put to use in 2005, but a portion of the land being irrigated was outside of the borders of the water rights. There was also land irrigated outside the borders of the water right that would exceed the acre limit of the water rights. Approval of these applications could possibly result in injury of other water users staying within the requirements of their water rights.

ENLARGEMENT

The 18.1 acres being irrigated outside of the borders of the water rights do enlarge the existing acre limitations set forth by the water rights. To allow this irrigation to continue would enlarge the water right.

BENEFICIAL USE

The application does not propose the beneficial use consistent with conservation of water resources in Idaho. The irrigation of the non-farmable land outside the borders of the water right on land not farmable appears to not hold true to the conservation of water resources.

LOCAL PUBLIC INTEREST

The irrigation of the 18.1 acres outside of the borders of the water rights should not be considered to be within the Local Public Interest.

WATER DISTRICT

This water right is within the borders of Water District 130. I have contacted the watermaster concerning this application, and the watermaster voiced the same concerns described above for the 18.1 acres irrigated outside the borders of the water rights. The watermaster also stated that this could require a potential Notice of Violation for those lands outside the water right border.

RECOMMENDATION

I recommend that this Water Supply bank Lease be denied. The owner may re-file the water bank lease once a water right transfer has been filed to correct the borders of the water rights, and any potential Notice of Violation issues have been resolved.