



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098

Phone: (208) 287-4800 • Fax: (208) 287-6700 • Web Site: www.idwr.idaho.gov

C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

June 7, 2011

NOTCH BUTTE FARMS LLC
PO BOX 486
JEROME ID 83338

RE: WATER SUPPLY BANK LEASE APPLICATIONS FOR WATER RIGHT NOS. 36-2156, 36-2735B AND 36-7648

Dear Applicant:

On October 22, 2009, the Department received your application to lease portions of the above water rights to the Water Supply Bank (Bank), namely 77.2 acres. 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 it was appropriated."

These water rights were partially decreed in the Snake River Basin Adjudication (SRBA) on in late 2001. The SRBA resets the forfeiture clock and water rights must be used or administratively protected through IDWR within five years of the SRBA partial decree. A review of aerial photography between 2002 and 2010 indicates only 608 acres of a total of 667 acres authorized by the water rights have been irrigated since 2001, indicating more than five years of non use has occurred.

Because of this evidence of more than five years of non-use, the requirements of Water Supply Bank Rule 25 cannot be met and we must deny your lease applications.

Please note a water right is not protected from forfeiture unless accepted into the Bank or an exception or defense to forfeiture applies as described in Idaho Code § 42-223. If you would still like to offer the water right for lease to the Bank, please submit new applications along with evidence that the offered right has been used within the previous five years. Please contact me at (208) 287-4907 if you have any questions.

Sincerely,

Monica Van Bussum
Sr. Water Resource Agent

Enclosure: Lease Applications (copies)

C: Allen Merritt – IDWR Southern Regional Office
Greg Sullivan – Brockway Engineering PLLC