



State of Idaho

DEPARTMENT OF WATER RESOURCES

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C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

May 30, 2011

STEVENSON BROTHERS FARMS
1099 N 400 W
RUPERT ID 83350

RE: APPLICATION TO LEASE A PORTION OF WATER RIGHT NOS. 36-2727 AND 36-7495 TO THE WATER SUPPLY BANK

Dear Applicant:

On July 11, 2008, the Department received your application to lease a portion of 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 it was appropriated."

I have discussed the history of use for this water right with the watermaster of Water District 130, Cindy Yenter. Your water rights were partially decreed in the Snake River Basin Adjudication (SRBA) in December 1997. The issuance of the partial decree restarts the "forfeiture clock" and right holders have five years from the date of the partial decree to 1) use the water, or 2) protect the water through administrative action such as the Bank. If five years elapses without some type of protective action, the water right could potentially be forfeited. I reviewed aerial photography for your property between 2000 and 2008, when we received your application, and have not found evidence of use.

Some of the acres offered under your lease agreement were protected between 2005 and 2007 by being accepted into the Magic Valley Ground Water District mitigation plan. The acres in the NWNW and SESW were protected for all three years and the acres in the NENW and NWSW were protected in 2005 only.

It might be best if I summarize it chronologically:

- December 1997 – partial decree is issued in SRBA
- 1998 – no review necessary
- 1999 – Aerial imagery does not support use during this year
- 2000 – Aerial imagery does not support use during this year
- 2001 – Aerial imagery does not support use during this year
- 2002 – Aerial imagery does not support use during this year
- 2003 – Aerial imagery does not support use during this year
- 2004 – Aerial imagery does not support use during this year

- 2005 – Some of the acres were accepted into the MVGWD mitigation plan; forfeiture stayed for those accepted acres; this year does not count as non-use for those accepted acres
- 2006 – Some of the acres were accepted into the MVGWD mitigation plan; forfeiture stayed for those accepted acres; this year does not count as non-use for those accepted acres
- 2007 – Some of the acres were accepted into the MVGWD mitigation plan; forfeiture stayed for those accepted acres; this year does not count as non-use for those accepted acres
- 2008 – Application for lease received July 11, 2008

If we count up the years of non-use (1999, 2000, 2001, 2002, 2003, 2004, and some acres between 2005 and 2007), you see it adds up to more than five years of non-use.

Additionally, it does not appear the place of use described on your water right accurately describes your current irrigation practices. For example, it appears some rocky outcrops were excluded from your original water right but you now appear to be putting water to beneficial use on at least some of those acres. You might consider applying for a transfer to include those being irrigated acres now outside of your authorized place of 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,



Monica Van Bussum
Sr. Water Resource Agent

C: Allen Merritt – IDWR Southern Regional Office
Cindy Yenter – Watermaster, Water District 130