



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

May 12, 2011

C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

HARRY S RINKER
PO BOX 7250
NEWPORT BEACH CA 92658-7250

RE: WATER SUPPLY BANK LEASE APPLICATION FOR WATER RIGHT NO. 37-21268

Dear Applicant:

On December 16, 2009, the Idaho Department of Water Resources (Department) received your application to lease a portion of 37-21268 to the Water Supply Bank (Bank) for an indefinite period. The Department has completed its review and must deny your lease application for the following reasons.

37-21268 is considered an uncontested overlap to several water rights that are still at issue in the Snake River Basin Adjudication (SRBA). Those water rights are 37-899B, 37-20427, 37-20429 and 37-20431. These water rights are scheduled for a status conference on June 22, 2011. Uncontested overlaps are identified as recommendations to which no objections were filed but may still be affected by the outcome of SRBA proceedings.

Water rights are protected from forfeiture as long as they are in the SRBA. We can not process an application which is pending action in the SRBA because we must know the extent of historical use, which is determined in the SRBA. Once your water rights are partially decreed in the SRBA and are no longer at issue, you can file new lease applications with the Bank.

Additionally, the Water Supply Bank Rules (also known as IDAPA 37.02.03) provide criteria to be considered when determining whether to accept a water right into the Bank. One of the criteria for consideration is whether lease and subsequent rental of the rights will result in enlargement. It appears 37-21268 is a ground water right supplemental to surface water rights from the Big Wood River. Enlargement is based on extent of development and beneficial use. Because of their supplemental nature, the extent of use under supplemental rights is often much less than is on the face of the right, making it difficult to rent supplemental water rights without enlargement. Often when a supplemental right is offered to the Bank, the primary right (in this case, one or more rights from surface water sources) is offered to the Bank as well to prevent enlargement. If you wish to reapply for a lease in the future, please include documentation regarding the historic use of the supplemental right. Supplemental water rights are difficult to forfeit through 5 years of non-use through their very nature – they are only used when needed.

For these reasons, the Department must deny your application. To recap, the two reasons are:

1. Overlapping water rights are still pending in the SRBA
2. 37-21268 is supplemental and we do not know the extent of historic use, making enlargement upon rental likely

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

Sincerely,

A handwritten signature in black ink, reading "Monica Van Bussum". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Monica Van Bussum
Sr. Water Resource Agent

Enclosure(s): Lease Application

C: Charles G Brockway – Brockway Engineering PLLC