

SANDS LLC NOTES

-JL 3/16/11

Sands owns property in the Robbs Creek drainage in upland area southwest of Horseshoe Bend and west of old & current Hwy 55. Numerous surface water right filings of various types have been filed in that area in the last few years by Sands & others.

It has reached a point that continued approval of new rights is questionable: is water available, will new uses dry up the stream(s), will continued conflicts be manageable? Robbs Creek is an unregulated tributary stream in Payette Water District #65.

Sands was involved in a lawsuit over some rights, including 65-3504. The case has been resolved, resulting in Sands ownership of some disputed rights, including this one. Western recently completed an ownership change for 65-3504.

Sands filed two applications in early 2011 for this right: (1) extension to avoid forfeiture and (2) water bank lease. The standard 5-year validity period with respect to the applications covers 2006-2010. The right was decreed in 2002. Both applications describe the entire right and include a reasonable defense to forfeiture (litigation). Aerial photos show possible irrigation in 2004 and probable non-use in 2006 & 2009.

The right is presumed to be valid: 2002 decree, 2004 possible use, followed by litigation that concluded in January 2011.

Conclusion

1. If the water bank application is denied (minor & perhaps unreliable source of water?), the extension application should be processed.
2. If the water bank application is approved, the extension application could be processed, although that would not provide any additional protection. The owner would be better served to withdraw the extension and protect the right via the bank. An extension could be filed later if the right ceases to be enrolled in the bank.