

MEMORANDUM

TO: Water Right File 61-11985 and 61-11987
FROM: Daniel A. Nelson
DATE: April 8, 2011
SUBJECT: Jay and Jonna Barnett Water Supply Bank Rental Application

SUMMARY

Jay Barnett filed an application to lease all of water rights 61-11985 and 61-11987 for a term ranging from April 30, 2011 to April 30, 2016. Water rights 61-2168 and 61-11898 were decreed on October 26, 2000, and subsequently split into water rights 61-11985 and 61-11987 through a water right transfer. Water right 61-11985 portion was for 0.10 cfs and 31.8 AF for 7.1 acres. Water right 61-11987 portion was for 0.02 cfs, for 1.3 acres. Water right 61-11987 is an expansion right of water right 61-11985. When combined these water rights allow 8.4 acres of irrigation with 0.10 cfs and 31.8 AF.

These two water rights were involved in a water right transfer number 69815 in April of 2003. There was a concern at the time of that transfer on whether or not the water right had been forfeited. A previous ruling on the parent water rights resolved the forfeiture issues by stating that the forfeiture time clock should begin at the time the water right decree was issued on the original water rights. Therefore, at the time of the transfer approval, there had only been 2 years of non-use when the water right transfer was approved in April of 2003. Water right transfer 69816 required that the changes to this water right be accomplished within one year of the approval of the water right transfer. It does not appear as though the owner of this water right has accomplished this requirement of the water right transfer.

Approximately 2 years of the forfeiture clock had been used at the time that the water right transfer was approved on this water right. Since that approval, the LandSat photos suggest that the new place of use described in the water right transfer has still not been irrigated. Therefore, from time that the transfer was approved until the present date there have been 8 years that the water right has not been used.

A water bank lease was filed in 2004, to protect the water right from forfeiture from 2004 to 2006. By the time Department staff could review this water bank lease the term in the application had expired, so the application was returned unprocessed. Even though the water bank lease was not reviewed, the forfeiture clock should be tolled during this period, since it was not the fault of the water right owner that the application was not reviewed.

Therefore, the 8 years of non-use from the time of the transfer approval should be reduced to 6 years of non-use. When the period of non-use prior to the water right transfer is included into this equation, there is approximately 8 years that water right has not been used or did not have the protection against forfeiture from the water bank. From the evidence available, it appears as though this water right has been forfeited.

AUTHORITY TO FILE

The tax lot information and other ownership information suggest that Barnettts are the current owner of the property, and have the authority to file and sign this application.

SUFFICIENCY OF SUPPLY

There was a concern about the sufficiency of the water supply during the water right transfer for these water rights. This issue was resolved by including a special condition subordinating this water right to water rights in the local area was included on the water right transfer. This condition would need to be carried forward on any water bank rental.

INJURY

There is evidence to suggest that this water right has surpassed the time period allowed for forfeiture of the water right. To rent this water right could cause injury to other water users in this area.

ENLARGEMENT

No enlargement is being proposed.

BENEFICIAL USE

The application proposes beneficial use consistent with conservation of water resources in Idaho.

LOCAL PUBLIC INTEREST

The original water right had several water right transfers that did cause considerable discussions within the local area concerning the local public interest due to the availability of water for this water right transfer. Special conditions were composed to address these issues. However, with the extended period that this water right has gone unused could bring those concerns back to the forefront.

WATER DISTRICT

Ground water in the area described by this water right is not currently being regulated by a watermaster.

RECOMMENDATION

I recommend that this water right not be accepted into the water bank until a formal administrative review of the current validity of the water right is addressed.