

Van Bussum, Monica

From: Skaggs, Pam
Sent: Tuesday, November 23, 2010 1:22 PM
To: Van Bussum, Monica
Cc: Keen, Shelley
Subject: FW: WSB Recurring Rentals Questions

Monica,

Shelley discussed the questions & concerns noted below with me today providing the following direction:

- We want a streamline process & don't want to advertise unless there is a special concern
- We also don't want to take rentals to the board any more than necessary, so recurring 5 year rentals okay to escape the greater than 5 year requirements
- We should advise renters to seek a permanent solution because the bank may not have sufficient rights to meet their needs in the future (no guarantees), but there is no limit to the number of rentals/years allowed.
- Recurrent rental applications should be timely for a relevant review of the proposal & submitted within the year prior to end of existing rental. We shouldn't approve something further in the future as there are too many unknown factors, so recurrent applications that are not timely should be returned.

Please come & discuss any questions or variations with me when you are in the office. You should be able to resolve the new Cleft of Rock Farms rental application with an explanation letter.

Pam

From: Skaggs, Pam
Sent: Friday, November 19, 2010 8:27 AM
To: Keen, Shelley
Cc: Van Bussum, Monica
Subject: WSB Recurring Rentals Questions

Shelley,

It appears that we have conflicting or at least unclear direction regarding the 5 year or temporary nature of use for rental of Water Supply Bank (WSB) rights. (See Monica's email below.) Review of past WSB actions show advertising has been very limited based on the temporary nature of WSB rentals; however, we also have a history of recurring or renewed rentals for the same applicant, use and/or rights without advertising or other requirements.

The current example provided by Monica for Cleft of the Rock Farms has an approved current rental through 2014 and a new application submitted now for the next 5 year period to 2019 including comments from the applicant stating that they "...propose to continue with renewals until such time that BLM would remove the water from the water bank." This doesn't appear to be a temporary plan and the applications for 5 year periods appear to be a strategy to avoid additional requirements for advertising and board approval that has been acceptable in the past.

The current direction to only lease rights into the bank for a 5 year period does make the idea of a rental application for more than 5 years appear moot except for the grandfathered "indefinite" leases. The "indefinite" leases should diminish slowly over time if we don't approve any new ones. Idaho Code 42-

1766 provides an appeal procedure for any right holder who feels injured in some manner by an approved WSB rental & it is a standard condition of approval reducing the need for advertising. A renewal of an existing lease doesn't cause as much concern if there hasn't been any problems reported in the previous rental period. Advertising doesn't seem necessary except when potential concerns are identified.

To address the advertising concern, I suggest we add new WSB Rental applications to the website in some fashion along with other new applications to notify people of new rental proposals & allow them to review the scanned documents in lieu of advertising. This would provide a public notice of sorts during the review period for those recurring rental applications for another 5 years and eliminate some of the concern about the appearance of circumventing the rules through multiple 5 year leases.

Recurring rentals at some point become more than temporary in nature. Should we continue to approve them or put the right holder on notice through the 2nd approval that further rentals will not be approved & a permanent solution must be found? What is the basis for the temporary nature of the bank process? When does a WSB rental become more than temporary and a permanent solution required? And does it matter if water is available for rent in the bank and there is no apparent injury? Is there some further direction regarding long term use of bank rights?

Pam

From: Van Bussum, Monica

Sent: Friday, November 12, 2010 3:02 PM

To: Skaggs, Pam

Subject: rental for 2015-2019 **Proposed renewal every 5 years under 43-13595 & 43-13597 also**

Hi Pam,

On March 29, 2010, the Department approved a rental application for 2010-2014 for Cleft of the Rock Farms for water right 43-2409B (BLM). On Wednesday, the renter filed an application to rent 43-2409B from 2015-2019.

Water Supply Bank Rule 30.02 says, "The Director may give notice of an intended rental as he deems necessary, provided that prior to approving any application for purchase, or **for rental for a period of more than five (5) years**, he shall give notice as required in Section 42-222(1), Idaho Code."

Water Supply Bank Rule 30.05 says, "The Director is authorized to rent water rights offered by the Board from the Board's water supply bank **for a period up to five (5) years**, but shall submit applications for purchase, or rental **for a period of more than five (5) years to the Board for action.**"

Section 42-222, Idaho Code, provides, "Upon receipt of such application it shall be the duty of the director of the department of water resources to examine same, obtain any consent required in section 42-108, Idaho Code, and if otherwise proper to **provide notice of the proposed change in a similar manner as applications under section 42-203A, Idaho Code**...For applications proposing to change only the point of diversion or place of use of a water right in a manner that will not change the effect on the source for the right and any other hydraulically-connected sources from the effect resulting under the right as previously approved, and that will not affect the rights of other water users, the director of the department of water resources **shall give only such notice to other users as he deems appropriate.**"

Section 42-108, Idaho Code, provides, "...After the effective date of this act, no person shall be authorized to change the period of use or nature of use, point of diversion or place of use of water unless he has first applied for and received approval of the department of water resources under the provisions of section 42-222, Idaho Code."

Technically, the applicant is not exceeding the five year mark because the rental periods are five years each, but of course the cumulative rental period will be ten years. I did find this in the **WSB handbook**, "As interest in the bank

increases, more people are submitting multi-year rental applications. Applicants generally *choose not to exceed the five years* due to the increased review requirements described above.” The handbook leads me to believe subsequent five-year applications do not need to be advertised.

· So this long email is to give you background and to ask if you agree. Thanks!

Monica