

M E M O R A N D U M

Date: March 3, 2008
To: Water Right File(s) 36-2083A, 36-2083B, and 36-8593
From: Aaron Marshall
Re: Water Supply Bank Rental Application Review – Blue Lakes Country Club

The water rights listed above are the subject of a request to extend a prior approval for rental of the rights from the Water Supply Bank for aesthetics use to provide supplemental water into two natural lakes. Although IDWR has previously approved the rental, the request to extend the rental should be reviewed to ensure consistency with Section 42-1501 through 1505, Idaho Code, related to minimum stream flows. Section 42-1502 defines a stream to include "...any lake...or other natural body of standing or moving water..." The proposal could be viewed as a supplement to the natural level without creating a minimum level that would require protection, but this issue warrants further discussion prior to approval by the Board.

BACKGROUND

On March 25, 2004, the Idaho Department of Water Resources (Department) received applications from Blue Lakes Country Club of Twin Falls, Idaho, to lease a portion of water right nos. 36-2083A, 36-2083B, and 36-8593 to the Board's Water Supply Bank (Bank) along with an application to rent water from the Bank.

The portions of the rights offered for lease to the Bank were accepted with a lease expiration date of December 31, 2006. These rights all share the same points of diversion and place of use providing water from Alpheus Creek for irrigation of golf course lands adjacent to the Snake River (see attached map). These rights were rented from 2004 through 2006 by Blue Lakes Country Club to provide water for aesthetics and pond evaporation in Bass Lake and Little Bass Lake.

On May 11, 2007, the Department received applications to extend the lease term of the portions of these rights in the Bank through December 31, 2012 and an application to rent water from the Bank for an additional six years. The lease terms were extended and a rental agreement was approved for 2007.

WATER SUPPLY BANK RULE 30

Water Supply Bank Rule Subsection 030.05 (IDAPA 37.02.03.030.05) states, "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. The Director will advise the Board on applications which require Board approval under Rule Subsection 025.06 whether he can approve the application in whole or in part or with conditions to comply with Section 42-1763, Idaho Code."

Water Supply Bank Rule Subsection 030.06 (IDAPA 37.02.03.030.06) states, "The Board will review applications for purchase or which propose the rental of water rights for a duration of more than five (5) years, and may approve, approve with conditions or may reject the applications as the Board determines to best meet the purposes of Rule 1 and promote the interest of the people of the state of Idaho."

Since water has already been rented for four years (2004 – 2007), the Director is authorized to approve the rental of water for 2008 but future rentals will require Board approval. The

application for rental of water can be approved with conditions in order to comply with Section 42-1763, Idaho Code.

SECTION 42-1763, IDAHO CODE

"RENTALS FROM BANK – APPROVAL BY DIRECTOR. – The terms and conditions of any rental of water from the water supply bank must be approved by the director of the department of water resources. The director of the department of water resources may reject and refuse approval for or may partially approve for a less quantity of water or may approve upon conditions any proposed rental of water from the water supply bank where the proposed use is such that it will reduce the quantity of water available under other existing water rights, the water supply involved is insufficient for the purpose for which it is sought, the rental would cause the use of water to be enlarged beyond that authorized under the water right to be rented, the rental will conflict with the local public interest as defined in section 42-202B, Idaho Code..."

WATERMASTER RECOMMENDATION

In her review of the applications to extend the rental through 2012 (see attached email), watermaster Cindy Yenter concluded, "I would be willing to support a one-year or year-to-year rental extension if the Country Club agrees to file and diligently pursue a water right transfer approval. If a transfer is not filed I will object to additional extensions beyond 2008." The basis for her recommendation is that the Country Club needs a permanent water right for the uses provided by the rental.

However, Section 42-1764(1), Idaho Code, states, "The approval of a rental of water from the water supply bank may be a substitute for the transfer proceeding requirements of section 42-222, Idaho Code."

Travis Thompson, attorney for Blue Lakes Country Club, indicated that the master plan for the portions of the rights in the Bank is still under review and revision (see attached email). Until their master plan is complete, which will likely occur prior to the end of 2012, they would like to withhold the filing of an application for transfer.

An application for transfer to change the use from irrigation to aesthetic use would raise the same minimum stream flow issues as the rental application. The Department has not historically authorized transfers to change from irrigation or other uses to in-stream uses because the action may be interpreted to create a minimum stream flow that may not be consistent with Section 42-1501 through 1505, Idaho Code.