

MEMORANDUM

To: Glen Saxton, Hal Anderson, Jeff Peppersack

From: Cynthia Bridge Clark

Date: December 15, 2004

Re: INVOICE TO USBOR FOR SECOND PAYMENT TO LESSORS PARTICIPATING IN THE 2004 SNAKE RIVER PILOT LEASING PROGRAM FOR RENTAL OF WATER FROM THE WATER SUPPLY BANK. WATER RIGHT NOS. 2-10205, 2-2159, 2-2354, 2-7184, 2-7229, 2-7284, 2-2386, 2-2387, 2-2388, 2-7148, 2-2279, 2-7012, 2-2249, 2-2250, 2-2251, 2-2252, 2-2253, 2-2254, 2-2255, 2-2256, 2-2361, 2-7001, 2-2371, 2-2372, 2-2262, 2-2145, 2-7144, 2-2443, 2-7030, 2-7068, 2-7076, 2-7132, 2-2198, 2-2191, 2-2370, 2-2194A, 2-2194B, 2-2186, 2-2204, 2-2206, 2-2214, 2-2215, 2-2217, 2-2218, 2-2210, 2-2269, 2-2367, 2-2379, 2-2298, 2-2376, AND 2-7182

The following is a summary of the number of acres eligible for the second and final payment from the Water Supply Bank (bank) under the Snake River Pilot Leasing Program for 2004. Payments will be issued in accordance with the Contract number 1425-04-WL-10-0023 (Contract) between the United States Bureau of Reclamation (Reclamation) and the Idaho Department of Water Resources (IDWR) to Implement the Rental of Water Rights Under the Pilot Program for Leasing of Snake River Natural Flow Water Rights for 2004 (Program).

Payment

Under section II.C.1, the Contract specifies that payment to the individual lessors will be issued at a pay rate per acre identified in the individual agreements (Agreements) between Reclamation and the lessors minus ten percent (10%) to be credited to the Water Administration Account as provided in the Water Supply Bank rules (*IDAPA 37.02.035.01*). The individual Agreements provide that one half of the estimated payment will be paid on or around July 30, 2004, and balance shall be issued after the irrigation season has ended and verification of the Program compliance is complete. The Contract specifies that IDWR shall invoice Reclamation for each payment to the lessors plus the associated 10% for the Water Administration Account.

Grindstone Butte Mutual Canal Company, Farm Development Corp., and Sailor Creek Water Company provided written requests to receive a single payment after the end of the irrigation season. Reclamation issued a contract amendment in a letter to the department, PN-3100, WTR-4.10, to authorize the change in payment schedule. Additionally, Grindstone Butte Mutual Canal Company specified in their request that the single payment be issued on or after January 3 and before January 7, 2004. Bergh Farms and Clover Hollow, LLC requested the final payment be issued on or about December 28 or 29, 2004.

Reclamation was invoiced for the first payment in mid-July, 2004. The payment was calculated based on 50% of the estimated total payment in accordance with the Contract. All of the lessors were issued this first payment with the exception of the three entities described

above, and the remainder will be issued in this second and final payment in accordance with the amounts listed on the attached Payment Summary (Table II).

Monitoring and Compliance

Section II.D.2 of the Contract indicates that monitoring compliance with the Agreements, will include review of satellite data and field visits to confirm the leased lands are not being irrigated. The department visited all of the fields identified on the contracts between June 8 and June 22, 2004, and four infrared satellite images, flown May 4, June 21, July 23, and September 9, 2004, were ordered for review of compliance. A large percentage of the lands had cover crops this year, and some of the crops were well developed due to rain in the early part of the season. Assessment of water use was difficult in some cases, particularly on lands benefiting from drainage from other fields. Site visits were used to verify whether water use was evident, field terrain, the presence of irrigation equipment, and to observe the difference between the dry land cover crops and those being irrigated. In most cases vegetative growth on the idled lands were less developed, varied, stressed, or experiencing heavy weed growth and volunteer crops from previous years including alfalfa, wheat/grain and kochia. Many of the fields had been recently cut for weed control.

Watering was not observed on any of the contracted lands during the field visits. However, the following acres were determined to be either ineligible for payment or required additional review to establish compliance:

1. A bean crop was observed on a 39.1-acre field in the Bell Rapids Irrigation Company. Though the field appeared to be dry during the site visit, detached hand lines were positioned across the field. The company confirmed the field was being irrigated and that the field was identified incorrectly on the original application and final contract. Upon request by the company to swap the acres for other idled lands, Reclamation stated by e-mail (July 19, 2004, see attached) that the acres should be declared ineligible for payment since the deadline for submittal of proposed lands had passed and the Agreement was executed. The ineligible acres were included in the first payment to Bell Rapids, but have been subtracted from the final payment (original contract for \$360,885.00, reduced by \$5,865.00 to \$355,020.00).
2. As part of the application review process, the department provided acreage measurements for the proposed fields to Reclamation (see signed maps attached to Agreements between the lessors and Reclamation). Clover Hollow, LLC removed a couple of fields from the program during the signing of the Agreement and estimated the revised size of a field in the southwest quarter of section 5, T5S, R7E, B.M. The field was estimated to be 135.9 acres. The idled lands were later measured by the department using available imagery to be 133.1 acres. In accordance with part IB. of the Agreement, the total number of eligible acres was reduced by 2.8 acres.
3. Potential irrigation activity on a field owned by Roger Young in the northeast and southeast quarters of section 35, T5S, R5E, B.M. was identified upon review of the four available satellite images. Mr. Young contracted with Reclamation to idle lands associated with a total of five adjacent pivots. Imagery indicated that vegetation growth on the western most pivot progressed significantly by the September 9, 2004 image.

A cover crop of wheat and some weeds were observed on this pivot during the field visit on June 9, 2004. A pivot was in place on the field running southwest from the center point, but was not in operation. The other fields were also dry with cut grain and alfalfa.

Mr. Young was contacted for information regarding activity on the western most pivot. He stated that the field was planted in potatoes during the 2003 irrigation season. The crop was cleared by late September and watered heavily in the fall to prepare a wheat crop. Mr. Young noted that he had not planned to participate in the leasing program at that point in time. The field was seeded with forty pounds of wheat per acre, and the crop was left uncut and unsprayed during the 2004 season because he intended to obtain a grazing contract. The grazing did not take place, and weeds such as, Russian thistle and possibly Kochia, spread heavily. He also stated that the pivot had been left at approximately 200 degrees from true North after preparing the field for the wheat crop, but was moved around July to about 90 to 100 degrees to protect against winds coming from the northwest.

Mr. Young stated that a hay crop was harvested from some of the other fields seeded in new alfalfa in 2003 that was crowded out by volunteer wheat. The southwestern pivot was left with grain stubble. He agreed to provide an affidavit or map describing the crop and harvest activity on all of the pivots in the 2003 and 2004.

The department reviewed other available photography of the fields, including high resolution NAIP Imagery flown in July of 2004. There is no indication of pivot tire tracks on the western most pivot. The location of the pivot during the field visit is consistent with Mr. Young's description (approximately 200 degrees from north), and appears to have moved by the time the NAIP Image was flown. Pictures from the original field visit in June show what appear to be Russian thistle and Kochia growing within the wheat crop. Kochia is known for being a very drought tolerant plant with a deep taproot. It spreads rapidly and is effective in competing for light, nutrients and soil moisture, and can be a problem for late-maturing crops or fallow lands. Russian thistle has similar characteristics. The presence of such weeds and lack of herbicide may explain the appearance of vegetative growth in the late season infrared image.

Available data suggests that heavy weed growth and spring precipitation could account for the activity highlighted in the infrared imagery. There isn't any other information available to indicate the lands were irrigated during the 2004 irrigation season. Gail McGarry was notified by telephone on December 14, 2004 that the department intends to recommend payment for the identified lands.

Summary

The attached tables (Table I & II) identify the participating lessors, contract numbers, acres idled, and summarizes the total payment amounts.

Reclamation should be invoiced, and the lessors issued warrants for the second and/or final payment in the amounts listed in the Payment Summary, Table II. The corresponding administrative fees are referenced, as well as the total amount to be requested from Reclamation for Payment 2.

**2004 SNAKE RIVER PILOT LEASING PROGRAM
RENTAL OF WATER FROM THE WATER SUPPLY BANK**

**INVOICE TO U.S. BUREAU OF RECLAMATION
FOR FINAL LESSOR PAYMENT**

TABLE I: CONTRACT & FINAL ACREAGE SUMMARY

LESSOR	AGREEMENT BETWEEN LESSORS AND USBOR ¹					TOTAL IDLED ACRES ²		RENTED WATER RIGHT(S)
	Agreement No.	Contracted Idled Acres (ac)	Payment Rate (price/ac)	Estimated Total Payment by Reclamation	Eligible Idled Acres (End of Irr. Season)	Acres Ineligible for Payment		
Bell Rapids Mutual Irrigation Co.	1425-04-WL-10-00012	2405.9	\$150.00	\$360,885.00	2366.8	39.1	2-10205	
Bergh Farms	1425-04-WL-10-0004	477.6	\$139.50	\$66,625.20	477.6	0.0	2-2159, 2-2354, 2-7184, 2-7229, 2-7284	
Clover Hollow, LLC.	1425-04-WL-10-0002	3122.4	\$139.00	\$434,013.60	3119.6	2.8	2-2386, 2-2387, 2-2388, 2-7148	
Dirks, Robert	1425-04-WL-10-0007	185.7	\$149.00	\$27,669.30	185.7	0.0	2-2279, 2-7012	
Falcon Butte Farms, Inc.	1425-04-WL-10-0001	4072.2	\$111.50	\$454,050.30	4072.2	0.0	2-2249, 2-2250, 2-2251, 2-2252, 2-2253, 2-2254, 2-2255, 2-2256, 2-2361, 2-7001	
Falcon Butte Farms, Inc.	1425-04-WL-10-0001	197.0	\$134.50	\$26,496.50	197.0	0.0	2-2371, 2-2372	
Farm Development Corp.	1425-04-WL-10-00013	123.6	\$150.00	\$18,540.00	123.6	0.0	2-2262	
Grindstone Butte Mutual Canal CO	1425-04-WL-10-00011	5856.3	\$150.00	\$878,445.00	5856.3	0.0	2-2361, 2-7001	
Huey Farms, Inc.	1425-04-WL-10-0006	589.9	\$149.00	\$87,895.10	589.9	0.0	2-2145, 2-7144	
Kitsos, Constantine	1425-04-WL-10-00018	52.3	\$150.00	\$7,845.00	52.3	0.0	2-2443, 2-7030, 2-7068	
Little Valley Mutual Irrigation Company	1425-04-WL-10-00016	814.6	\$150.00	\$122,190.00	814.6	0.0	2-7076, 2-7132	
Mills, James	1425-04-WL-10-00017	258.3	\$150.00	\$38,745.00	258.3	0.0	2-2198, 2-2191	
Monlieth, Herbert, Edward Ray & Susan	1425-04-WL-10-0008	729.7	\$149.00	\$108,725.30	729.7	0.0	2-2361, 2-2370, 2-7001	
Murphy Flats Water Company, Inc.	1425-04-WL-10-00015	537.9	\$150.00	\$80,685.00	537.9	0.0	2-2194A, 2-2194B	
Rosti, Martha	1425-04-WL-10-00010	111.4	\$150.00	\$16,710.00	111.4	0.0	2-2186, 2-2204, 2-2206, 2-2214, 2-2215, 2-2217, 2-2218	
Sailor Creek Water Company	1425-04-WL-10-0009	870.8	\$150.00	\$130,620.00	870.8	0.0	2-2210, 2-2269, 2-2367	
South Elmore Irrigation Company	1425-04-WL-10-0005	4883.9	\$140.00	\$683,746.00	4883.9	0.0	2-2379	
TLK Farms, Inc.	1425-04-WL-10-0003	573.4	\$140.00	\$80,276.00	573.4	0.0	2-2298, 2-2376, 2-7182	
Young, Roger	1425-04-WL-10-00014	390.4	\$150.00	\$58,560.00	390.4	0.0		
TOTALS:					26253.3	\$3,682,722.30	41.9	

¹ The "Agreement" represents the Water Rental and Forbearance Agreement entered into between the United States Bureau of Reclamation ("Reclamation") and the individual Lessors. The **Contracted Acres Idled** and the **Payment Rate** represent the number of acres to be idled and the payment per acre agreed upon between the Lessors and Reclamation. The **Estimated Total Payment by Reclamation** is based on the Contracted Idled acres times the Payment Rate.

² The **Eligible Idled Acres** represent the total number of acres determined to be eligible for payment at the end of the irrigation season based on the criteria set forth in the Contract between Reclamation and the Department of Water Resources ("IDWR") to implement the rental of water rights from the Snake River ("Contract"). Acres determined to be ineligible for payment were observed to have been irrigated during the 2004 irrigation season, or did not meet the original eligibility criteria defined in the Lessor's Agreements and IDWR's Contract.

TABLE II: PAYMENT SUMMARY¹

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LESSOR	PAYMENT 1 ²			PAYMENT 2 ³			TOTAL PAYMENTS		
	Total Payment 1 by Reclamation (50% of Estimated Total)	Payment 1 To Lessor (90% Payment 1)	Administrative Fee (10% Payment 1)	Total Payment 2 by Reclamation (Remainder of Total)	Payment 2 To Lessor (90% Payment 2)	Administrative Fee (10% Payment 2)	Total Payment to Lessor	Total Administrative Fee	Total Payment by Reclamation
Bell Rapids Mutual Irrigation Co.	\$180,442.50	\$162,398.25	\$18,044.25	\$174,577.50	\$157,119.75	\$17,457.75	\$319,518.00	\$35,502.00	\$355,020.00
Bergh Farms	\$33,312.60	\$29,981.34	\$3,331.26	\$33,312.60	\$29,981.34	\$3,331.26	\$59,962.68	\$6,662.52	\$66,625.20
Clover Hollow LLC	\$217,006.80	\$195,306.12	\$21,700.68	\$216,617.60	\$194,955.84	\$21,661.76	\$390,261.96	\$43,362.44	\$433,624.40
Dirks, Robert	\$13,834.65	\$12,451.19	\$1,383.47	\$13,834.65	\$12,451.19	\$1,383.47	\$24,902.37	\$2,766.93	\$27,669.30
Falcon Butte Farms, Inc.	\$240,273.40	\$216,246.06	\$24,027.34	\$240,273.40	\$216,246.06	\$24,027.34	\$432,492.12	\$48,054.68	\$480,546.80
Farm Development Corp.	\$0.00	\$0.00	\$0.00	\$18,540.00	\$16,686.00	\$1,854.00	\$16,686.00	\$1,854.00	\$18,540.00
Grindstone Butte Mutual Canal CO	\$0.00	\$0.00	\$0.00	\$878,445.00	\$790,600.50	\$87,844.50	\$790,600.50	\$87,844.50	\$878,445.00
Huey Farms, Inc.	\$43,947.55	\$39,552.80	\$4,394.76	\$43,947.55	\$39,552.80	\$4,394.76	\$79,105.59	\$8,789.51	\$87,895.10
Kitsos, Constanline	\$3,922.50	\$3,530.25	\$392.25	\$3,922.50	\$3,530.25	\$392.25	\$7,060.50	\$784.50	\$7,845.00
Little Valley Mutual Irrigation Company	\$61,095.00	\$54,985.50	\$6,109.50	\$61,095.00	\$54,985.50	\$6,109.50	\$109,971.00	\$12,219.00	\$122,190.00
Mills, James	\$19,372.50	\$17,435.25	\$1,937.25	\$19,372.50	\$17,435.25	\$1,937.25	\$34,870.50	\$3,874.50	\$38,745.00
Montierth, Herbert, Edward & Susan	\$54,362.65	\$48,926.39	\$5,436.27	\$54,362.65	\$48,926.39	\$5,436.27	\$97,852.77	\$10,872.53	\$108,725.30
Murphy Flats Water Company, Inc.	\$40,342.50	\$36,308.25	\$4,034.25	\$40,342.50	\$36,308.25	\$4,034.25	\$72,616.50	\$8,068.50	\$80,685.00
Rosti, Martha	\$8,355.00	\$7,519.50	\$835.50	\$8,355.00	\$7,519.50	\$835.50	\$15,039.00	\$1,671.00	\$16,710.00
Sailor Creek Water Company	\$0.00	\$0.00	\$0.00	\$130,620.00	\$117,558.00	\$13,062.00	\$117,558.00	\$13,062.00	\$130,620.00
South Elmore Irrigation Company	\$341,873.00	\$307,685.70	\$34,187.30	\$341,873.00	\$307,685.70	\$34,187.30	\$615,371.40	\$68,374.60	\$683,746.00
Terry Ketterling (TLK Farms, Inc.)	\$40,138.00	\$36,124.20	\$4,013.80	\$40,138.00	\$36,124.20	\$4,013.80	\$72,248.40	\$8,027.60	\$80,276.00
Young, Roger	\$29,280.00	\$26,352.00	\$2,928.00	\$29,280.00	\$26,352.00	\$2,928.00	\$52,704.00	\$5,856.00	\$58,560.00
	\$1,327,558.65	\$1,194,802.79	\$132,755.87	\$2,348,909.45	\$2,114,018.51	\$234,890.95	\$3,308,821.29	\$367,646.81	\$3,676,468.10

¹ As stipulated in the Contract between Reclamation and the Department of Water Resources, two payments will be issued to all of the lessors unless otherwise requested by the lessor. The first payment shall include one half of the Total Payment to Lessor on or around July 1, 2003, and the second payment will be issued after the irrigation season has ended for the remainder of the Total Payment to Lessor. Prior to making the payments to the lessors, IDWR will invoice Reclamation for the payment including the associated 10% for state Administrative Fees. Three of the lessors requested in writing that a single payment be issued after the end of the irrigation season. These include Farm Development Corporation, Grindstone Butte Mutual Canal Company, and Sailor Creek Water Company. These entities were not issued a first payment. The Total Payment to Lessor is based on ninety percent (90%) of the Eligible Idled Acres times the individual Payment Rate. The remaining ten percent (10%) is retained for Administrative Fees.

² Total Payment 1 by Reclamation was calculated based on one half (50%) of the Estimated Total Payment by Reclamation. (For the purposes of the first payment, all of the contracted acres were considered to have been left idle in accordance with criteria set forth in the Lessor Agreements. This was based in part on satellite imagery collected on May 4, 2004.) Payment 1 to Lessor represents ninety percent (90%) of the Total Payment 1, while the Administrative Fee represents remaining ten percent (10%). Total Payment 1 = (Estimated Idled Acres) x (Payment Rate per Acre) x (50%); Payment 1 to Lessor = (Total Payment 1) x (90%)

³ Total Payment 2 by Reclamation was calculated based on the remainder of the total payment due from Reclamation: Eligible Idled Acres times the Payment Rate minus Total Payment 1. Total Payment 2 = (Eligible Idled Acres) x (Payment Rate) - (Total Payment 1); Payment 2 to Lessor = (Total Payment 2) x (90%)

Clark, Cynthia (Bridge)

From: Ruth Page [RPAGE@pn.usbr.gov]
Sent: Monday, July 19, 2004 11:14 AM
To: cclark@idwr.state.id.us
Subject: Re: Bells Rapids ineligible field

Hey, welcome back and I hope your vacation was wonderful!

I spoke with Diane and then verified my answer with Gail, but it is too late in the game to be swapping lands. It is very important for the applicants to check, check and recheck the maps. But, mainly it is important to submit the potential eligible lands by the deadline and by allowing them to swap lands now it would be extending the deadline for just them. Also their lands are tied to the contract and the contract has been executed. Gail thought that maybe they could include the lands they want to swap into the exchange. They will lose the 150 on the 39.1 acres since they farmed it, but at least they will make 15 on the other 39.1.

Call me if you want to discuss further.

>>> "Clark, Cynthia (Bridge)" <cclark@idwr.state.id.us> 07/16/04
10:13AM >>>
Gail and Page,

I just got a call from Diane at Bell Rapids regarding the field of beans. They identified the wrong field on the contract and would like to substitute a different 39.1 acres. I told her she should make a request to change the fields with you because it may require a change or amendment to the contract. I also noted that we would have to verify that the new field meets the eligibility criteria. I assume they would not be able to enter a field that increases the total acres. I will also want to verify that the field they propose to substitute is not in the latest exchange proposal. I told her she should see what you might require, but that I would like to see a request in writing to document the change.

I will plan to pay them in full for all of their acres in the first payment. If the field is not changed, I will deduct the full amount from the final payment.

Gail, Jeff Peppersack will act as a contact if you have any questions about the invoice while I am away.

See you all when I get back.
Thanks,
Cynthia

Cynthia Bridge Clark
Idaho Department of Water Resources
Water Allocation Bureau
(208) 327-7898

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T 735

ROGER G. YOUNG FARM T. 5 S., R. 5 E. B.M.
Roger & Young 12-17-04

NORTH 0°

103.8

2003 CROP - POTATOES
HARVESTED MID SEPT. 2003
IRRIGATED FOLLOWING HARVEST
UNTIL WATER WAS TURNED OFF
FOR THE SEASON AROUND 10-26-03,
03-12 & 13-04 SPUD ROWS LEVELED
BY SHALLOW DISCING & HARROW TO
SAVE MOISTURE. 03-19-04 SEEDING
OF WHEAT COVER CROP FINISHED.
PIVOT WAS MOVED BACK & FORTH
180° & 210° FOR BOTH DISCING &
SEEDING. IN AUGUST PIVOT WAS
MOVED CCW TO 135°, NOTHING
228.3 WAS HARVESTED IN 2004.

AS OF 12-16-04 THIS FIELD COVER
IS HEADED STANDING WHEAT
& WEEDS. NO 2004
IRRIGATION.

2003 CROP - OLD STAND OF
ESTABLISHED ALFALFA &
IRRIGATED IN THE FALL OF 2003.

06-01-04 THRU 06-11-04 HARVESTED
DRYLAND ALFALFA INCLUDING SOUTH CORNER

2003 CROP - WHEAT W/ ALFALFA
AFTER HARVEST FIELD WAS IRRIGATED
IN THE FALL OF 2003.

2004 COVER - ALFALFA

06-01-04 THRU 06-11-04 HARVESTED
DRYLAND ALFALFA INCLUDING
SOUTH CORNER.
NO 2004 IRRIGATION

2003 CROP WHEAT W/ ALFALFA
AFTER HARVEST FIELD WAS
IRRIGATED IN THE FALL OF 2003.

2004 COVER - ALFALFA
06-01-04 THRU 06-11-04 HARVESTED
DRYLAND ALFALFA INCLUDING
SOUTH CORNERS.

NO 2004 IRRIGATION

2003 CROP - WHEAT
AFTER HARVEST FIELD WAS
IRRIGATED IN THE FALL OF 2003.

2004 COVER - WHEAT STUBBLE.
NOTHING HARVESTED IN 2004.
NO 2004 IRRIGATION

2003 CROP - WHEAT W/ ALFALFA.
AFTER HARVEST FIELD WAS
IRRIGATED IN THE FALL OF 2003.

2004 COVER - WHEAT STUBBLE
& SPOTTY ALFALFA.
NOTHING HARVESTED IN 2004.
NO 2004 IRRIGATION

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104.5

129.0

HEL

35/36

12
13.7 HEL

DEPARTMENT OF WATER RESOURCES

DEC 19 2004

RECEIVED

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