

MEMORANDUM

To: Files 75-2137, 75-4199, 75-4200

From: Cynthia Bridge Clark

Date: July 5, 2004

Re: Lease/Rental of Water Rights to the State Water Supply Bank

The Department of Water Resources Planning Division initiated an agreement with Fred E. Crabtree to lease irrigation water for instream flow use on Big Hat and Hat Creeks under the Columbia River Basin Water Transaction Program. According to department staff, the intent of the program is to enhance tributary flows for fish augmentation.

An application was filed with the Water Supply Bank (bank) to lease water associated with the irrigation of 26 acres from water right 75-2137, 75-4199, and 75-4200 from April 1 to October 31, 2004. A companion rental application was filed in the name of the Idaho Water Resource Board to rent the same rights for instream flow use under the Federal Reserve Wild and Scenic River Snake River Basin Adjudication (SRBA) Claim no. 75-13316. The claim identifies a beneficial use of "Wild and Scenic River" on the Salmon River. The federal claim was determined to be valid by the Idaho Supreme Court in *Potlatch v. U.S.*, 134 Idaho 912, 12 P.3d 1256 (2000) (Wild and Scenic) and *Potlatch v. U.S.*, 134 Idaho 916, 12 P.3d 1260 (2000) (Hells Canyon). The claim is currently in litigation to substantiate authorized quantities. The rental application was filed to ensure that the water associated with the rights remain in Big Hat Creek rather than being diverted by the holders of junior water rights.

The application proposes a change in nature of use from irrigation to instream flow. To avoid enlargement of the rights, the volume available for rent was limited to the consumptive use. Evidence of historical beneficial use was not required for the determination of the consumptive volume for the short-term rental lease/rental. The consumptive use was calculated based on the number of acres leased times the standard consumptive irrigation requirement (2.5 afa per acre). The diversion rate was also a consideration given that the new use will require continuous flow. The continuous flow rate is limited to 0.15 cfs (total consumptive volume/(1.984 x 214 days)).

The right numbers and corresponding portions leased/rented are listed below:

Right No.	Acres (ac)	Diversion Rate (cubic ft per sec., cfs)	Consumptive Diversion Vol. (acre-feet per acre, afa)
75-2137	26 ac	0.52 cfs	65 afa
75-4199	26 ac	0.62 cfs	65 afa
<u>75-4200</u>	<u>14 ac</u>	<u>0.28 cfs</u>	<u>35 afa</u>
Total:	26 ac	0.52 cfs	65 afa

Rental of rights 75-2137, 75-4199, and 75-4200 is limited to a total combined diversion rate of 0.52 cfs and combined diversion volume of 65 afa, or a continuous diversion rate of 0.15 cfs for use from April 1, 2004 to October 31, 2004.

Acceptance in the bank was based on a preliminary recommendation issued for right 75-2137 in the Snake River Basin Adjudication (SRBA). The other two rights were not identified on the application but IDWR's Bill Graham confirmed that the place of use identified on the lease application will be idled and the applicant does not intend to use the water associated with the 26 acres from any of the rights. He noted that the rights should be leased to the bank in accordance with his agreement with the owner to leave the water undiverted. Rights 75-4199 and 75-4200 are claimed in the SRBA and are based on statutory claims. These have not been verified but were accepted into the bank due to overlap of the place of use.

The payment rate was negotiated between the water right owner and the department's planning division in conjunction with the Columbia River Basin Water Transaction Program.