



IDAHO DEPARTMENT OF
WATER RESOURCES

322 E Front Street, Suite 648, Boise ID 83702 • PO Box 83720, Boise ID 83720-0098
Phone: 208-287-4800 • Fax: 208-287-6700 • Email: idwrinfo@idwr.idaho.gov • Website: idwr.idaho.gov

Governor Brad Little

Director Gary Spackman

August 19, 2022

PEGGY & RICK ARMSTRONG
1380 N GALE MOUNTAIN RD
POCATELLO ID 83204

**RE: DENIAL OF APPLICATION(S) TO LEASE WATER RIGHT NO(S). 29-595A TO THE
WATER SUPPLY BANK**

Dear Applicant:

On June 28, 2022 the Department of Water Resources (Department) received your application(s) to lease water right(s) 29-595A to the Water Supply Bank (Bank). Water Supply Bank Rule 25 (also known as IDAPA 37.02.03.025) requires the Department to evaluate whether the water right has been lost through abandonment or forfeiture as defined by Section 42-222(2), Idaho Code. Section 42-222(2) states, in part, "All rights to the use of water acquired under this chapter or otherwise shall be lost and forfeited by a failure for the term of five (5) years to apply it to the beneficial use for which it was appropriated."

A review of aerial photography between 2016 and 2022 showed no evidence of irrigation on the acres proposed to be leased to the Bank.

We sent a Request for Additional Information on 7/18/2022 to submit evidence of beneficial use within the last five (5) years within 30 days to be considered for the 2022 season. As of today, we have not received notice of proof of beneficial use.

Because of this evidence of more than five years of non-use, the requirements of Water Supply Bank Rule 25 cannot be met and the attached lease application(s) is **denied**. If you can provide additional information to show beneficial use has occurred, please resubmit the application with the additional information within 30 days in order to incur no additional filing fee. Department resources were expended in order to provide a full review of your applications. Therefore, the lease application filing fees will not be refunded.

Please note that a water right is not protected from forfeiture unless it is accepted into the Bank or unless an exception or defense to forfeiture applies as described under Idaho Code § 42-223. If you have any questions regarding this matter, please contact me at (208) 287-4822.

Sincerely,

Mackenzie Kienholz
Water Supply Bank Specialist

COPY

STATE OF IDAHO
WATER RESOURCE BOARD

RECEIVED

JUN 28 2022

**APPLICATION TO SELL OR LEASE A WATER RIGHT
TO THE WATER SUPPLY BANK**

Department of Water Resources
Eastern Region

Designated Applicant Ricky Armstrong

(Select one owner – see item 1A on the application)

Water Right No. 29-595A

(One water right per application)

Is this application being submitted with a rental application as a lease/rental package?

Yes ☒ No ☐

This application must be prepared in accordance with the minimum requirement checklist below. Use this checklist to ensure all necessary documentation has been provided. This checklist is part of the lease application and must be included with the lease application. **Applications that do not meet the minimum requirements will not be processed and may be returned or denied.**

MINIMUM REQUIREMENT CHECKLIST

All items must be checked as either *Attached (Yes)* or *Not Applicable (N/A)*

Yes

☒ Completed *Application to Sell or Lease a Water Right to the Water Supply Bank*.

☒ Application filing fee of \$250.00 per water right. If you are submitting more than one lease application and the water rights have an overlapping, common place of use, or a common diversion rate or volume, the total fee for all water rights is \$500.00. For places of use, multiple water rights must be used to irrigate the same lands in order to qualify for the joint filing fee. Individual filing fees are required for water rights that share a common permissible place of use but which cover separate acres within the permissible place of use.

☒ Confirmation this form has been printed **single sided**, per requirement of the Water Supply Bank.

Attachment N/A Yes

1A ☐ ☐ Signatures and contact information for **all owners** of the water right to be leased or sold on this application.

1B ☐ ☐ An Internal Revenue Service (IRS) Form W-9 for the Designated Applicant.

1C ☐ ☐ *Notice of Change in Water Right Ownership* form (accessible from www.idwr.idaho.gov).

1D ☐ ☐ Contact information for an authorized representative and documentary proof they are authorized to represent the Designated Applicant on this application. If the Designated Applicant is a business, partnership, municipality, organization or association, include documents identifying officers authorized to sign or act on behalf of the entity.

2 ☐ ☐ Description of a water right portion offered to the Water Supply Bank.

3 ☐ ☐ A map that clearly outlines the specific location where irrigated acres will be dried up, or where a beneficial use of water will be suspended. You have the option of printing a map using the map tool on IDWR's website at: www.idwr.idaho.gov.

4A ☐ ☐ Written consent from irrigation district or water delivery company.

4G ☐ ☐ Evidence demonstrating the water right has not been forfeited pursuant to Section 42-222(2), Idaho Code.

Department Use Only

Fee Amount \$ 250.00

Received By: CA H

Date Received: 6/28/22

Receipt # E048270

W-9 received? Yes ☐ No ☐ (Route W-9 to Fiscal)

Name on W-9:

COPY

STATE OF IDAHO
WATER RESOURCE BOARD

APPLICATION TO SELL OR LEASE A WATER RIGHT
(Continued)

1. CONTACT INFORMATION

- A. This application must be completed by a Designated Applicant who is a current owner of the water right being sold or leased to the Water Supply Bank. If there are additional current owners, those individuals must authorize the Designated Applicant to represent them on this application by completing and signing Attachment 1A of this application package.

Designated Applicant Ricky Armstrong and Peggy Armstrong

Mailing Address 1380 North Gale Mountain RD Pocatello ID 83204
Street City State Zip Code

Email Address rla5372@aol.com Phone Number (208) 221-9560

- ☒ The Designated Applicant is the sole owner of the water right being sold or leased to the Water Supply Bank.

OR

- ☐ The Designated Applicant is representing additional water right holders who have completed Attachment 1A.

- B. Has the Designated Applicant submitted an IRS Form W-9 to this Department within the last 2 years? Yes ☐ No ☒
If no, complete the form and attach to this application (Attachment 1B).

- C. Are all applicants on this form listed in IDWR's records as the current owners of the water right? Yes ☐ No ☒
If no, attach a *Notice of Change in Water Right Ownership* form along with the required documentation and fee (Attachment 1C).

- D. Is this application being completed by an authorized representative of the Designated Applicant? Yes ☐ No ☒
If yes, representatives (includes employees of Designated Applicant companies) must complete this section and submit documentary proof of their authority to represent the Designated Applicant (Attachment 1D).

Name of Representative _____ Organization _____

Professional Title _____ Email Address _____

Mailing Address _____ Phone Number _____

- ☐ Send all correspondence for this application to the representative and not to the Designated Applicant.

OR

- ☐ Send original correspondence to the Designated Applicant and copies to the representative.

2. DESCRIPTION OF WATER RIGHT OFFERED TO THE BANK

- ☒ The full water right is being offered to the Bank.

OR

- ☐ A part of the water right is being offered to the Bank.

If a portion of the water right is being offered, complete Attachment 2.

3. MAP

Attach a map of the point(s) of diversion and place(s) of use proposed to be idled by this lease application. Make sure the idled place of use is outlined and annotated with legal land descriptions (Township, Range, Section and Quarter-Quarters) or with GPS coordinates. For irrigation purposes, mark the number of acres you desire to idle. If the water right proposed for lease is located within a permissible place of use (PPU) and portions of the PPU will continue to receive water from non-leased water rights, clearly outline on a map the acres within the PPU that will continue to be irrigated, as well as acres that will be idled during the lease term. Label the map **Attachment 3**.

COPY

STATE OF IDAHO
WATER RESOURCE BOARD

APPLICATION TO SELL OR LEASE A WATER RIGHT
(Continued)

4. GENERAL INFORMATION

- A. Is the diversion works or system owned or managed by an irrigation district or water delivery company? Yes ☐ No ☒
If yes, provide written consent from the company, corporation or irrigation district authorizing the proposed sale or lease (Attachment 4A).

If your water right is delivered through a canal, lateral or ditch operated by a canal company, irrigation district, or similar delivery entity, your lease request must include written consent from the company, district, or similar entity for your removal of water from its system pursuant to Section 42-108, Idaho Code and IDAPA WSB Rule 37.02.03.25.02e.

- B. Please provide a description of the current water diversion and delivery system.

A headgate supplying a ditch.

- C. Describe any other water rights used for the same purpose at the same place of use as the water right being offered to the Bank.

- D. Are any of the water rights identified in Section 4C stacked with the water right proposed for lease? Yes ☐ No ☒

Stacked water rights are used together to achieve a common beneficial use, such as irrigation of the same lands. Stacked water rights cannot be separated and must be jointly leased to the Water Supply Bank. Stacked water rights qualify for the multiple fee payment of \$500.

- E. Will the present place of use continue to receive water from any other source? Yes ☐ No ☒

If yes, explain the relationship between the different water sources and how enlargement of the authorized use will not occur if this water right is leased.

- F. Identify annual volumes and/or rates of water diverted in the last 5 years to accomplish the beneficial use authorized by this water right. A measurement order for water district 29H was not enforced until 2021 and no measurement device had been installed. Currently no measurement device has been installed.

- G. Has any portion of this water right undergone a period of five or more consecutive years of non-use? Yes ☒ No ☐

If yes, describe the circumstances and attach evidence to demonstrate how the water right has not been lost through forfeiture (Attachment 4G). See Section 42-223, Idaho Code for exceptions to forfeiture. Your application may be denied if forfeiture concerns are not addressed. Due to flash flooding the diversion has been damaged and diversion has been minimum in recent years. The location of the diversion makes repair and maintenance cost prohibitive.

- H. Is this water right involved in any other IDWR process, such as an application for transfer or a mitigation plan?

If yes, describe.

Yes ☐ No ☒

COPY

STATE OF IDAHO
WATER RESOURCE BOARD

APPLICATION TO SELL OR LEASE A WATER RIGHT
(Continued)

5. SALE/LEASE AGREEMENT

A. Is the water right, or portion thereof, offered to the Idaho Water Resource Board (IWRB) for sale ☐ or lease ☒.

If lease, specify the years when the use of water will be suspended: 2022 to 2027 (maximum lease period 5 calendar years).
(Year) (Year)

B. Show the minimum payment acceptable to the seller/lessor. The minimum payment may be shown as the "current rental rate" as established by the IWRB. Include the method of determining the minimum payment if other than the current rental rate.

The rental rate will be the current rental rate of \$20/AF.

I hereby assert that the information contained in this application is true to the best of my knowledge, and that I have the authorities necessary to offer this water right for sale or lease to the Idaho Water Resource Board.

The Designated Applicant acknowledges the following:

1. Payment to the Designated Applicant is contingent upon the sale or rental of the water right from the Bank.
2. While a water right is in the Bank, the seller/lessor of the water right may not use the water right, even if the water right is not rented from the Bank.
3. A water right accepted into the Bank stays in the Bank until the Designated Applicant receives written confirmation from the Board or Water Supply Bank that the water right has been released from the Bank.
4. While a water right is in the Bank, forfeiture is stayed.
5. Acceptance of a water right into the Bank does not, in itself, confirm the validity of the water right or any element of the water right.

Rick L. Armstrong
Signature of Designated Applicant

Rick L. Armstrong
Printed Name

6-28-2022
Date

Signature of Authorized Representative

Printed Name

Date

Mail to:
Idaho Department of Water Resources
P.O. Box 83720
Boise, ID 83720-0098

COPY

Kienholz, Mackenzie

From: Kienholz, Mackenzie
Sent: Tuesday, July 19, 2022 2:24 PM
To: ndale.lish@gmail.com; rla5372@aol.com
Subject: RE: Water Supply Bank Lease/Rental vs Temporary Change
Attachments: 2022 WR 29-595A To-From Map.pdf; Lease Application 1A.pdf

Hello again,

I went through all the files again to make sure we tie up any loose ends.

Attached is a map showing your proposed to and from places of use and places of diversion for the movement of water right 29-595A. This would be helpful to include in a Temporary Change application along with the maps you originally provided if you choose to go that route.

Because Peggy is listed as an owner of the water right, she will also need to sign off on everything. I have attached the page of the lease application that designates a single lessor. If you'd like, you can designate Rick as the designated applicant and have Peggy sign under Applicant #2 so that everything moving forward only needs Rick's approval. Otherwise, you can both sign it as equal applicants, but everything will need both Rick and Peggy's approval.

I know I've given you quite a bit of information today, so again, feel free to contact me with any questions.

Thank you,

Mackenzie Kienholz
Water Supply Bank Specialist



Planning & Projects
mackenzie.kienholz@idwr.idaho.gov
Phone: (208) 287-4822

From: Kienholz, Mackenzie
Sent: Tuesday, July 19, 2022 12:56 PM
To: ndale.lish@gmail.com; rla5372@aol.com
Subject: Water Supply Bank Lease/Rental vs Temporary Change

Hello all,

As I discussed with each of you on the phone, the application package you submitted to the Water Supply Bank (Lease Application # 2404, Rental Application #2405) may qualify to be completed as a Temporary Change instead, which typically has a much shorter processing timeline. I have attached the Temporary Change form, but it can also be found at [Water Rights Forms | Idaho Department of Water Resources \(Serve Idaho\)](#) under Water Rights Forms, Changed in Use. The application form requires a \$50.00 fee.

Statute 42-222A, found at [Section 42-222A – Idaho State Legislature](#), outlines the conditions of Temporary Changes. Please look over this to confirm your situation falls within the conditions.

If you choose to apply for a Temporary Change, you will just need to be specific as to what you would like to do with your Water Supply Bank Applications in the Remarks section. You can request that we put the Supply Bank Applications on hold until a decision is reached on the Temporary Change. This way, if the Temporary Change is denied we can continue processing the Supply Bank Applications. Be sure to include what you would like to do with the Supply Bank Applications if the Temporary Change is approved:

- 1) Withdraw the Water Supply Bank Applications (application fee refunded)
- 2) Push the dates back by a year to 2023-2027 (application fee retained)
- 3) Push the start date to 2023 and shorten the total length ie 2023-2026 (application fee retained)

As long as the water right(s) that usually irrigate the acres are being cut back due to the drought, from what I understand there is a good chance that your situation will qualify for a Temporary Change.

Please still provide the proof of beneficial use or proof that water right 29-595A has not been lost to forfeiture that was previously requested (emailed to Rick Armstrong 7/18/2022). This can be sent back to me and **will be needed regardless of whether you are doing a Water Supply Bank lease/rental or a Temporary Change.**

Feel free to email or call me with any questions about the beneficial use proof, temporary change criteria, or anything else that comes up.

Thank you,

Mackenzie Kienholz
Water Supply Bank Specialist



Planning & Projects
mackenzie.kienholz@idwr.idaho.gov
Phone: (208) 287-4822



322 E Front Street, Suite 648, Boise ID 83702 • PO Box 83720, Boise ID 83720-0098
Phone: 208-287-4800 • Fax: 208-287-6700 • Email: idwrinfo@idwr.idaho.gov • Website: idwr.idaho.gov

Governor Brad Little

Director Gary Spackman

July 18th, 2022

RICKY & PEGGY ARMSTRONG
1380 N GALE MOUNTAIN RD
POCATELLO ID 83204

**RE: ADDITIONAL INFORMATION REQUEST FOR PROCESSING APPLICATION TO
LEASE WATER RIGHT NO(S) 29-595A TO THE WATER SUPPLY BANK**

Dear Applicant:

On June 29, 2022, the Department of Water Resources (Department) received application(s) to lease water right(s) 29-595A to the Water Supply Bank (Bank) submitted for Ricky and Peggy Armstrong. Water Supply Bank Rule 25 (also known as IDAPA 37.02.03.025) requires the Department to evaluate whether the water right has been lost through abandonment or forfeiture as defined by Section 42-222(2), Idaho Code. Section 42-222(2) states, in part, "All rights to the use of water acquired under this chapter or otherwise shall be lost and forfeited by a failure for the term of five (5) years to apply it to the beneficial use for which it was appropriated."

Attachment 4G on the lease application(s) for water right 29-595A indicates that some portion of the water right has undergone a period of five or more consecutive years of non-use. The circumstances were described as "Due to flash flooding the diversion has been damaged and diversion has been minimum in recent years. The location of the diversion makes repair and maintenance cost prohibitive." Section 42-223, Idaho Code outlines exceptions of forfeiture. Please provide evidence water rights 29-595A has not been abandoned or lost to forfeiture.

Because evidence of beneficial use within the last five (5) years was not provided with the application the requirements of Water Supply Bank Rule 25 cannot be met, and the attached lease application(s) **may be denied**. If you can provide additional information to show beneficial use has occurred, please submit the additional information within **30 days** and the Department will continue processing the application(s). If you cannot provide the additional information, the Department may deny the application(s).

If you have any questions regarding this matter, please contact the Department at (208) 287-4800.

Sincerely,

A handwritten signature in black ink, appearing to read "Mackenzie Kienholz", written over a light blue horizontal line.

Mackenzie Kienholz

Water Supply Bank Specialist