



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

April 26, 2022

SOLDIER CREEK VENTURES LLC
C/O JAY CAVEN
5596 N DISCOVERY PL
BOISE ID 83713

**RE: DENIAL OF APPLICATION(S) TO LEASE WATER RIGHT NO(S). 37-77B TO
THE WATER SUPPLY BANK**

Dear Applicant:

On September 17, 2021, the Department of Water Resources (Department) received your application to lease water right 37-77B 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 from when the right was decreed in the Snake River Basin Adjudication in 2010 through 2020 shows no evidence of irrigation on the acres proposed to be leased to the Bank. The water right, when owned by Royal Fork Restaurant Corp, was accepted into the bank for the year 2016 only and a notice of conclusion was sent to the owner of the right in 2017 reminding the owner of the right that the use would either need to be resumed immediately or placed back into the Bank to protect it from forfeiture. A request for information that the water right had not been abandoned or forfeited was made via email to you on October 25, 2021. A response via email from the watermaster was received on February 9, 2022, which requested a defense from forfeiture pursuant to Section 42-223(6), "circumstances over which the water right owner has no control." Evidence or information to support this defense was not sufficient for the period of non-use from 2011-2015 and 2017-2018, prior to the new owner of the water right taking control.

Since the requirements of Water Supply Bank Rule 25 cannot be met, 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.

Soldier Creek Ventures LLC

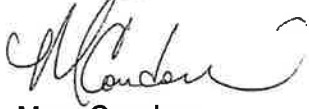
April 26, 2022

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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) 287-4936.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Condon", written over a horizontal line.

Mary Condon
Water Supply Bank Coordinator

c: Corey Skinner - IDWR Southern Regional Office
Rusty Kramer - WD 37B Watermaster

STATE OF IDAHO
WATER RESOURCE BOARD

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

RECEIVED
SEP 17 2021
DEPARTMENT OF
WATER RESOURCES

Designated Applicant Soldier Creek Ventures LLC
(Select one owner – see item 1A on the application)

Water Right No. 37-77B
(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 <u>Internal Revenue Service (IRS) Form W-9</u> for the Designated Applicant. |
| 1C | ☒ | ☐ | <i>Notice of Change in Water Right Ownership</i> 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 <u>Section 42-222(2), Idaho Code</u> . |

Department Use Only

Fee Amount \$ <u>250 -</u>	Received By: <u>ku</u>	Date Received: <u>9-17-21</u>	Receipt # <u>C110946</u>
W-9 received? Yes ☒ No ☐ (Route W-9 to Fiscal)		Name on W-9: <u>Soldier Creek Ventures LLC</u>	

2145

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 Soldier Creek Ventures LLC

Mailing Address 5596 N Discovery Pl, Boise, ID 83713

Street

City

State

Zip Code

Email Address jrcaven@yahoo.com

Phone Number 208.891.3426

☒ 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 Jay Caven Organization Soldier Creek Ventures LLC

Professional Title Manager Email Address jrcaven@yahoo.com

Mailing Address same as Applicant Phone Number 208-891-3426

☒ 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**.

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.
Existing cement diversion and ditch Repairs are needed.
- 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. This water right has been in the water bank during this time
- 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. See the attached "Water Supply Bank Lease Contract". My father passed away in 2019 when he was the owner and I am now owner and manager of this water right.
via Royal Fork Restaurant Corp.
- H. Is this water right involved in any other IDWR process, such as an application for transfer or a mitigation plan? Yes ☐ No ☒
If yes, describe. _____

STATE OF IDAHO
WATER RESOURCE BOARD

APPLICATION TO SELL OR LEASE A WATER RIGHT
(Continued)

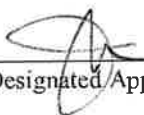
5. SALE/LEASE AGREEMENT

- 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: 2021 to 2026 (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.
"current rental rate"

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.



Signature of Designated Applicant

Jay Caven - Soldier Creek Ventures LLC 8/17/2021

Printed Name Date



Signature of Authorized Representative

Jay Caven - Manager 9/15/21

Printed Name Date

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

WATER RIGHT REPORT

Evidence of Water Right

8/17/2021

IDAHO DEPARTMENT OF WATER RESOURCES

Water Right Report

WATER RIGHT NO. 37-77B

Owner Type | Name and Address

Current Owner | SOLDIER CREEK VENTURES LLC

760 E KING ST STE 105
MERIDIAN, ID 83642-4825
2088913426

Original Owner | THOMAS G BOARDMAN

Priority Date: 07/15/1886

Basis: Decreed

Status: Active

Source | Tributary

CHIMNEY CREEK | CAMAS CREEK

<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
IRRIGATION	04/15	10/31	3.98 CFS	
Total Diversion			3.98 CFS	

Location of Point(s) of Diversion:

CHIMNEY CREEK | SESWSW | Sec. 26 | Township 01N | Range 12E | CAMAS County

Place(s) of use:

Place of Use Legal Description: IRRIGATION CAMAS County

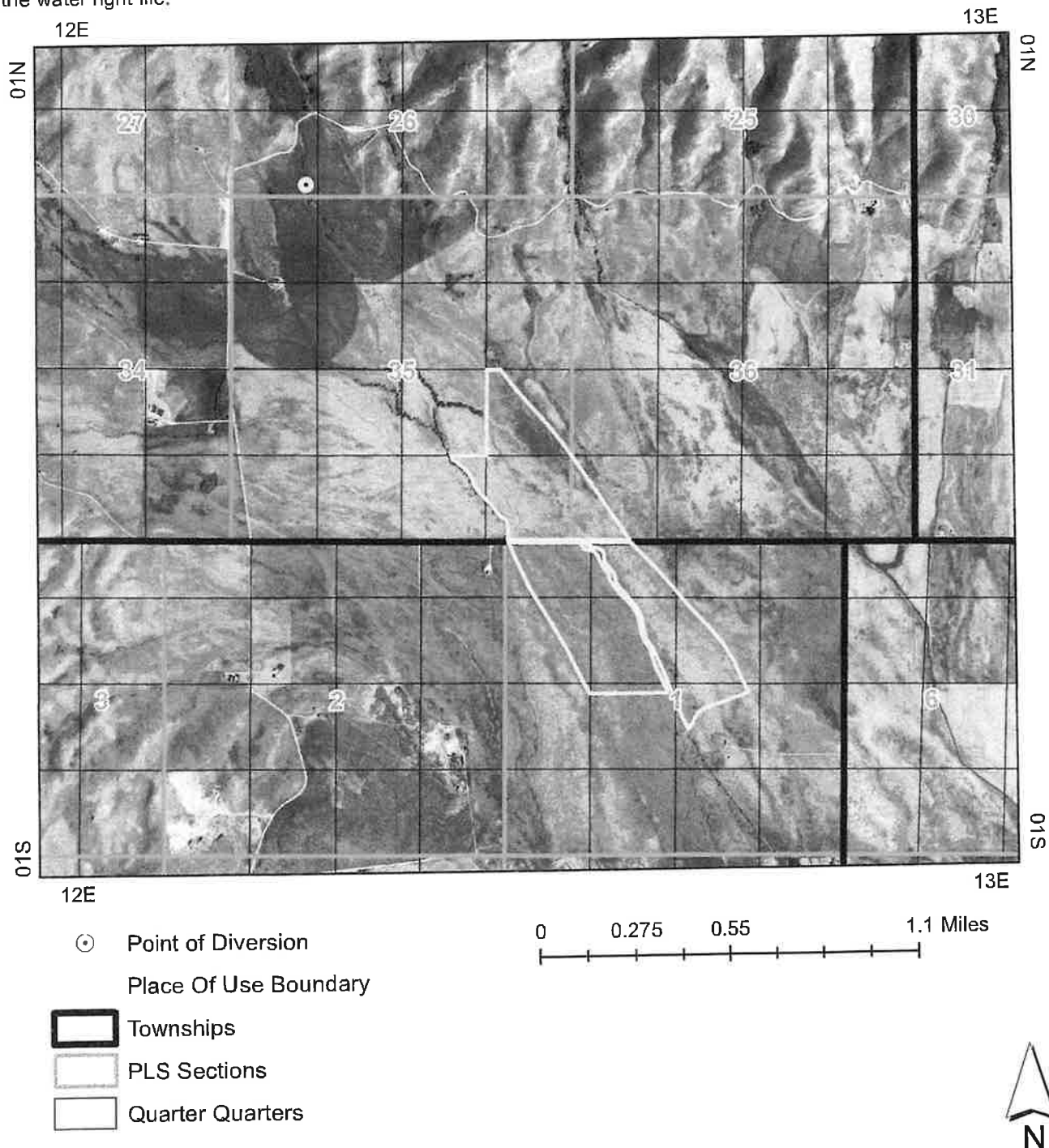
<u>Township</u>	<u>Range</u>	<u>Section</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>
01N	12E	35		NESE	23		SWSE	4		SESE	36			
		36		SWSW	13									
01S		1		SWNE	19									
			3	NENW	18	4	NWNW	20		SWNW	14		SENW	38
				NESW	4.4		NWSW	0.2						
				NWSE	9.4									

Total Acres: 199

State of Idaho
Department of Water Resources**Water Right
37-77B**

IRRIGATION

The map depicts the place of use for the water use listed above and point(s) of diversion of this right as currently derived from interpretations of the paper records and is used solely for illustrative purposes. Discrepancies between the computer representation and the permanent document file will be resolved in favor of the actual water right documents in the water right file.



Water Right	Priority Date	Source	Tributary	Leased Rate	Annual Leased Volume	Total Leased Acres
37-77B	7/15/1886	CHIMNEY CREEK	CAMAS CREEK	3.98 cfs	696.5 af	199.0 ac

Location of Point(s) of Diversion for Water Right 37-77B.

CHIMNEY CREEK SESWSW Sec. 26, Twp 01N, Rge 12E, CAMAS County

Water Right	Beneficial Use	From	To	Diversion Rate	Volume
37-77B	IRRIGATION	04/15	to 10/31	3.98 cfs	696.5 af

Total: 3.98 cfs 696.5 af

Place of Use to be Idled Under This Lease: IRRIGATION

Twp	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
01N	12E	35													23.0		4.0	36.0	63.0
01N	12E	36											13.0						13.0
01S	12E	1			19.0		18.0 L3	20.0 L4	14.0	38.0	4.4	0.2				9.4			123.0

Total Acres: 199.0

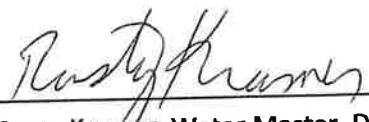
August 17, 2021

TO: Idaho Department of Water Resources

FROM: Rusty Kramer, Water Master for Idaho District 37-B

RE: Water Bank Application for Soldier Creek Ventures LLC, Water Right 37-77B

As required per the IDWR "Application to Sell or Lease a Water Right to the Water Supply Bank" form, as Water Master of District 37-B, I hereby give consent, by signing below, for Soldier Creek Ventures LLC to apply for placing water right 37-77B into the Water Supply Bank for up to five years.



Rusty Kramer, Water Master, District 37-B



0004050082



STATE OF IDAHO
Office of the secretary of state, Lawrence Denney
ANNUAL REPORT
Idaho Secretary of State
PO Box 83720
Boise, ID 83720-0080
(208) 334-2301
Filing Fee: \$0.00

For Office Use Only

-FILED-

File #: 0004050082

Date Filed: 11/3/2020 12:15:59 PM

Entity Name and Mailing Address:								
Entity Name:	Soldier Creek Ventures LLC							
The file number of this entity on the records of the Idaho Secretary of State is:	0003709757							
Address	JAY CAVEN 5596 N DISCOVERY PL BOISE, ID 83713-5463							
Entity Details:								
Entity Status	Active-Existing							
This entity is organized under the laws of:	IDAHO							
If applicable, the old file number of this entity on the records of the Idaho Secretary of State was:								
The registered agent on record is:								
Registered Agent	Jay Caven Registered Agent Physical Address 5596 N DISCOVERY PL BOISE, ID 83713 Mailing Address 5596 N DISCOVERY PL JAY CAVEN BOISE, ID 83713-5463							
Limited Liability Company Managers and Members								
<table border="1"><thead><tr><th>Name</th><th>Title</th><th>Business Address</th></tr></thead><tbody><tr><td> Jay Caven</td><td>Manager</td><td>5596 N DISCOVERY PL BOISE, ID 83713</td></tr></tbody></table>			Name	Title	Business Address	Jay Caven	Manager	5596 N DISCOVERY PL BOISE, ID 83713
Name	Title	Business Address						
Jay Caven	Manager	5596 N DISCOVERY PL BOISE, ID 83713						
The annual report must be signed by an authorized signer of the entity.								
<u>Jay Caven</u> Sign Here		<u>11/03/2020</u> Date						
Job Title: Manager								

0547-9263 11/03/2020 12:16 PM Received by ID Secretary of State Lawrence Denney

Condon, Mary

From: Carter, Meghan
Sent: Monday, April 25, 2022 9:51 AM
To: Condon, Mary
Subject: RE: Forfeiture concerns WSB 37-77B

Mary,

I have reviewed your memo. My analysis of whether water right 37-77B may be accepted by the water supply bank follows. A water right retained in the water supply bank is protected from forfeiture. Multiple Programs Memo No. 2 says it is department policy to that any defense to forfeiture during a portion of a year will apply to the entire year. The Memo further explains that a defense to forfeiture initiated in the sixth calendar year will prevent a finding of forfeiture. This means that water right 37-77B accrued a five-year period of nonuse from 2011 to 2015 at which point it was placed in the bank in 2016. Idaho Code § 42-1764 specifies that if a period of nonuse occurred prior to the water right being placed in the bank and the right was not beneficially used while in the bank, the period of nonuse will continue to accrue toward forfeiture. Therefore, another two years of nonuse occurred in 2017 and 2018 before Jerry Caven passed away. That's a total of seven years of nonuse. Whether or not Jay Caven can show circumstances beyond his control, the five-year period of nonuse occurred before he was in control of the water right. My conclusion is that the water cannot be accepted into the water supply bank. Let me know if you have any questions.

Meghan



[Meghan Carter | Deputy Attorney General](#)
Water Resources Section | Natural Resources Division
Office of the Attorney General | State of Idaho
O: 208-287-4810 | W: ag.idaho.gov

NOTICE: This message, including any attachments, is intended only for the individual(s) or entity(ies) named above and may contain information that is confidential, privileged, attorney work product, or otherwise exempt from disclosure under applicable law. If you are not the intended recipient, please reply to the sender that you have received this transmission in error, and then please delete this email.

From: Baxter, Garrick <Garrick.Baxter@idwr.idaho.gov>
Sent: Friday, April 22, 2022 8:55 AM
To: Carter, Meghan <Meghan.Carter@idwr.idaho.gov>
Subject: FW: Forfeiture concerns WSB 37-77B

Meghan,
Mary mentioned this issue in my meeting with her yesterday. Would you have time to look at this issue? Involves a defense to forfeiture.
Thanks,
Garrick

From: Condon, Mary <Mary.Condon@idwr.idaho.gov>
Sent: Thursday, April 21, 2022 2:58 PM
To: Baxter, Garrick <Garrick.Baxter@idwr.idaho.gov>
Cc: Bank <Bank@idwr.idaho.gov>
Subject: Forfeiture concerns WSB 37-77B

Hi Garrick,

I have attached a review memo and compilation of the evidence I have found for the period of time in which water right 37-77B is in question, in response to an application to lease the right into the Board's Bank. I'm also attaching the email reply from the watermaster, which contains his request to consider the non-use was outside the water right owners' control.

Thank you for offering to assign this to someone in legal who can provide a recommendation.

Best,
Mary

Mary Condon
Water Supply Bank Coordinator



IDAHO DEPARTMENT OF
WATER RESOURCES

Planning & Projects

mary.condon@idwr.idaho.gov

Direct: (208) 287-4936

Fax: (208) 287-6700, Attn. Mary C.

MEMORANDUM

To: Garrick Baxter
From: Mary Condon
Date: April 21, 2022
Re: WSB Lease Application for Water Right 37-77B, Evaluation of Defense from Forfeiture

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."

On September 17, 2021, the Department of Water Resources (Department) received an application to lease water right 37-77B to the Water Supply Bank (Bank). A review of aerial photography between 2010 when the right was decreed in the Snake River Basin Adjudication and 2020 shows no evidence of irrigation on the acres proposed to be leased to the Bank. The water right was previously accepted into the bank for the year 2016 only and a notice of conclusion was sent to the owner of the right (then Royal Fork Restaurant Corp) in 2017 reminding the owner of the right that the use would either need to be resumed immediately or placed back into the Bank to protect it from forfeiture.

A request for information that the water right had not been abandoned or forfeited was made via email to the new owner (Soldier Creek Ventures LLC) on October 25, 2021. A response (attachment 1) via email from the watermaster of Water District 37B, Rusty Kramer, was received on February 9, 2022, which requested a defense from forfeiture pursuant to Section 42-223(6), "circumstances over which the water right owner has no control." Evidence or information provided or obtained through research of Department records to evaluate this defense is described below.

The watermaster states in his reply that in 2018 he told the water right owner (Royal Fork) to put the right back into the bank since the owner was unable to resume use due to moving a pivot and ditch works. Royal Fork Restaurant was owned by Jerry Caven, who passed away in 2019. His son, Jay Caven and owner of Soldier Creek Ventures, took over ownership in 2020. Rusty states he had mistakenly told the new owner (Soldier Creek) that the water was in the Water Supply Bank in 2020.

Review of the Notice of Change in Water Right Ownership for 37-77B with 25 other rights listed on Attachment 1 of the notice filed in 2020 (available in the online water right records) has "Leased to Water Supply Bank" checked on this one water right, indicating the new owner was under the impression the right was in the bank. The scanned copy of this has "NO" written next to the checked yes, which may have been written by Department staff. The confirmation of change in ownership letter from the Department sent back to the new owner on June 30, 2020, does not include language that any of the water rights are in

37-77B Evaluation of Defense to Forfeiture

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the Water Supply Bank, where when water rights are in the Water Supply Bank, an additional paragraph explaining that information is included.

Review of the Water District 37B watermaster reports from 2015 through 2019 (available on the IDWR public website) include two lines for water associated with Royal Fork Restaurant, where the second line does not have any diversion and has the words "Water Bank." The watermaster report in 2020 has only one line for Soldier Creek Ventures (new owner) with all water rights listed and held by the company as being delivered, including 37-77B.

A timeline of events beginning the year the right was decreed until the year the most recent application to lease the right was received is summarized below.

Year	Owner	Summary of evidence or information considered
2010	Royal Fork Restaurant	Decreed in the SRBA; evidence of 199 acres described in the recommendation from 2006 aerial imagery review
2011	Royal Fork Restaurant	No evidence of irrigation
2012	Royal Fork Restaurant	No evidence of irrigation
2013	Royal Fork Restaurant	No evidence of irrigation
2014	Royal Fork Restaurant	No evidence of irrigation
2015	Royal Fork Restaurant	No evidence of irrigation, application to lease to the bank received by the Department for 2016 only
2016	Royal Fork Restaurant	Acceptance of water right into the Bank from 1/1/2016 until 12/31/2016
2017	Royal Fork Restaurant	Letter of release from the Bank sent to the owner on 1/6/2017; No evidence of irrigation
2018	Royal Fork Restaurant	Response from watermaster in 2022 email states the water was not used and told owner to place back into bank; Watermaster report from irrigation season for 2018 has "Water Bank" listed on second line for Royal Fork Restaurant; No evidence of irrigation
2019	Royal Fork Restaurant	Owner Jerry Caven passes away; Watermaster report from irrigation season for 2019 has "Water Bank" listed on second line for Royal Fork Restaurant; No evidence of irrigation
2020	Royal Fork Restaurant / Soldier Creek Ventures	Jay Caven of Soldier Creek Ventures files for ownership in June with Water Bank checked for 37-77B only; Response from watermaster in 2022 email states he mistakenly told Jay the right was in the Bank; Watermaster report for 2020 irrigation season changes ownership of all rights from Royal Fork to Soldier Creek in one line with none indicated in the Bank; No evidence of irrigation
2021	Soldier Creek Ventures	Jay for Soldier Creek files for lease of right 37-77B only, with statement the right has been in the Bank under item 4f – 5 years of annual volume and item 4g – 5 years of non-use on the application to lease

From: [Hersley, Jean](#)
To: [Hummer, Phill](#); [Parker, Cody](#)
Cc: [Bank](#)
Subject: FW: Soldier Creek Ventures Water Right 37-77B
Date: Thursday, February 10, 2022 7:55:20 AM

I sent an email and letter requesting additional information to lease water right 37-77B to the Bank. (See file on N drive, 2021 season). I received the email below from Rusty Kramer, watermaster of 37B. This is application #2145. Please let me know if we can accept this right in the Bank. Thank you.

*Jean Hersley
Technical Records Specialist II
Idaho Dept Water Resources
(208) 287-4942*

From: Rusty Krame <waterdistrict37b@outlook.com>
Sent: Wednesday, February 9, 2022 6:53 PM
To: Hersley, Jean <Jean.Hersley@idwr.idaho.gov>; jrcaven@yahoo.com
Subject: Soldier Creek Ventures Water Right 37-77B

Jean,

I understand Jay Caven recently tried to put water right 37-77B into the bank and was denied. The issue came up about nonuse and forfeiture and I will try and help with your decision. Water District 37B was issued a surface water measurement order on 10/19/15. As per the order it was to be implemented in a 3-year fashion. The Chimney Creek drainage was set to be measured by the 2018 irrigation season.

I had met with the manager of Soldier Creek Ventures several times during the 2018 season and we determined how difficult it was going to be to measure this irrigation water. There was issues with a pivot being installed right over the top of some existing ditches and the old diversion by another water user. It was determined to put this water back into the water bank until some more plans were made on how to use this water. Soon after, Jerry Caven (Jay's father) passed away and the water right did not get put back into the bank. After the dust settled from the estate the ownership moved over into Jay Caven's name with a change of managers. Jay had a ton on his plate with the loss of his father and trying to figure out the entire ranch in Fairfield which encompasses several thousand acres. Jay focused on his Deer Creek water right (37-2224 and 37-4096) which he spent a tremendous amount of time and money to get diversions and measurement devices installed. Jay worked with the Water District perfectly on this diversion.

Jay waited until last season to try and figure out logistics on the Chimney Creek right. I incorrectly told Jay it was still in the water bank after he told me to look it up for him. I still get screwed up when you look up a water right and click on "more options" it comes up with the deal that says it is in the Water Bank. Anyways Jay has met with me numerous times discussing plans for right 37-77B and met with the landowner upstream from this right.

Jay Caven (and his father) have been model water users and always pay the minute water

bills are sent out. All of their diversions, controlling devices and measurement devices are perfect. Jay always contacts me when the creek drops and offers to release water downstream to alleave water fights downstream. Jay and his workers are very easy to work with. I wish all water users were as cooperative as Jay. I would ask that you allow an extension to this water right so Jay can get things squared away with the property to allow for proper measurement and usage of this right.

Sincerely

Rusty Kramer

Water District 37B Watermaster

208-870-3217

Hersley, Jean

From: Condon, Mary
Sent: Thursday, February 10, 2022 10:13 AM
To: Hersley, Jean; Hummer, Phill; Parker, Cody
Cc: Bank
Subject: RE: Soldier Creek Ventures Water Right 37-77B

Jean,

I do not agree that there is defense to forfeiture for circumstances beyond the owners' control prior to 2016 lease (with exception to 2010 decree). There may be cause for 2017-2020 if the watermaster told the owner their right was in the bank, but it was not. I tried following the watermaster reports for years of reporting since 2014, but due to the multiple name changes for the right over the years it would take additional time. However, if the water master reports do support that the water right owner and watermaster thought the right was in the bank, there may be some defense. You can also use the ET viewer (IDWR website) on the property to see differences in CIR from 2010 through 2019. If the CIR is extremely low, under 1 ft/acre, then there was likely no manual application of water.

Controversial lease applications must be taken before the Board – where if the watermaster reports support the water right was thought to be in the bank, we might support non-use from 2017-2020 was out of the owners' control and go before the Board in the March board meeting or request a special session for consideration.

That's my take on a path forward.

Mary

Mary Condon
Water Supply Bank Coordinator



IDAHO DEPARTMENT OF
WATER RESOURCES

Planning & Projects

mary.condon@idwr.idaho.gov

Direct: (208) 287-4936

Fax: (208) 287-6700, Attn. Mary C.

From: Hersley, Jean <Jean.Hersley@idwr.idaho.gov>
Sent: Thursday, February 10, 2022 7:55 AM
To: Hummer, Phill <Phill.Hummer@idwr.idaho.gov>; Parker, Cody <Cody.Parker@idwr.idaho.gov>
Cc: Bank <Bank@idwr.idaho.gov>
Subject: FW: Soldier Creek Ventures Water Right 37-77B

I sent an email and letter requesting additional information to lease water right 37-77B to the Bank. (See file on N drive, 2021 season). I received the email below from Rusty Kramer, watermaster of 37B. This is application #2145. Please let me know if we can accept this right in the Bank. Thank you.

Jean Hersley
Technical Records Specialist II
Idaho Dept Water Resources
(208) 287-4942

From: Rusty Krame <waterdistrict37b@outlook.com>
Sent: Wednesday, February 9, 2022 6:53 PM
To: Hersley, Jean <Jean.Hersley@idwr.idaho.gov>; jrcaven@yahoo.com
Subject: Soldier Creek Ventures Water Right 37-77B

Jean,

I understand Jay Caven recently tried to put water right 37-77B into the bank and was denied. The issue came up about nonuse and forfeiture and I will try and help with your decision. Water District 37B was issued a surface water measurement order on 10/19/15. As per the order it was to be implemented in a 3-year fashion. The Chimney Creek drainage was set to be measured by the 2018 irrigation season.

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Sincerely

Rusty Kramer

Water District 37B Watermaster

208-870-3217



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

January 21, 2022

SOLDIER CREEK VENTURES LLC
C/O JAY CAVEN
5596 N DISCOVERY PL
BOISE ID 83713

2ND NOTICE

**RE: ADDITIONAL INFORMATION REQUEST FOR PROCESSING APPLICATION TO LEASE
WATER RIGHT NO(S) 37-77B TO THE WATER SUPPLY BANK**

*****TIME SENSITIVE RESPONSE REQUIRED*****

Dear Applicant:

On September 17, 2021, the Department of Water Resources (Department) received application(s) to lease water right(s) 37-77B to the Water Supply Bank (Bank) submitted for C-M LLC. An email was sent to Jay Caven on October 25, 2021, requesting additional information regarding water usage.

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 2010 when the right was partially decreed in the Snake River Basin Adjudication and 2016 when the rights were placed in the Bank, then from 2017 to 2020 when the rights were not protected shows no evidence of irrigation on the acres proposed to be leased to the Bank. That is a total of 9 years of apparent non-use. The forfeiture toll period does not reset after the rights were placed in the Bank.

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) may be **denied**. If you can provide additional information to show beneficial use has occurred, please submit the additional information within **14 days** and the Department will continue processing the applications. If you cannot provide the additional information, the Department will deny the applications. Department resources were expended to provide a full review of the applications. Therefore, the lease application filing fee will not be refunded.

The department will continue processing your application once you have submitted the requested information. Water right forms are available from the Department's website at www.idwr.idaho.gov. If you have any questions, please contact this office at (208) 287-4800.

Sincerely,


for Water Supply Bank

Hersley, Jean

From: Hersley, Jean
Sent: Monday, October 25, 2021 12:25 PM
To: 'jrcaven@yahoo.com'
Subject: Water Supply Bank Lease Application for 37-77B

On September 17, 2021, the Department of Water Resources (Department) received application(s) to lease water right(s) 37-77B to the Water Supply Bank (Bank) submitted for C-M LLC. 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."

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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) 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 applications. If you cannot provide the additional information, the Department will deny the applications. Department resources were expended to provide a full review of the applications. Therefore, the lease application filing fee will not be refunded.

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

*Jean Hersley
Technical Records Specialist II
Idaho Dept Water Resources
(208) 287-4942*