


Memo

To: 37-23227
From: Jean Hersley 
cc:
Date: 5/22/2020
Re: Cancelled WSB Lease Contract

Diamond/Soldier Properties LLC submitted a WSB Application to Lease a Water Right to the WSB on March 25, 2020. The proposed contract was sent on April 2, 2020. On April 8, Greg Sullivan, Brockway Engineering PLLC, informed the Department the property appurtenant to the water right had been sold and Diamond/Soldier Properties LLC would not be signing or returning the contract. The Department cancelled this application/contract on May 22, 2020.

RECEIVED

MAR 25 2020

DEPARTMENT OF WATER RESOURCES

STATE OF IDAHO WATER RESOURCE BOARD

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

Designated Applicant Diamond/Solder Properties LLC (Select one owner - see item 1A on the application)

Water Right No. 37-570A 37-23227 (One water right per application)

Is this application being submitted with a rental application as a lease/rental package? Yes [] No [x]

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.

MIMUMUM 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.
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.
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.
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

Table with 4 columns: Fee Amount \$, Received By, Date Received, Receipt #. Includes handwritten entries: 600, Ku, 3-25-2020, C108506.

1688

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 Diamond/Solder Properties LLC

Mailing Address PO Box 1607 Bellevue, WA 98009
Street City State Zip Code

Email Address _____ Phone Number 4254602542

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 Greg Sullivan Organization Brockway Engineering

Professional Title Engineer Email Address greg.sullivan@hotmail.com

Mailing Address 2016 N Washington St Ste 4 Twin Falls, Idaho 83301 Phone Number 208-736-8543

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.
This water right has been leased into the Idaho Water Supply Bank since 2014. Portions of water right 37-570A will be split onto Lot 3 and Lot 6 but retained by Diamond/Properties LLC.

- 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. None

- 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 leased into the Idaho Water Supply Bank since 2014.

- 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. This water right has been leased into the Idaho Water Supply Bank since 2014.

- 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

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: 2020 to 2024 (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

Chris Pollak
Printed Name

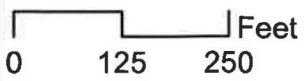
3/18/2020
Date

Signature of Authorized Representative

Printed Name

Date

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



Diamond/Soldier Properties LLC

NAIP 2019 AERIAL

Legend

-  Lot 6 WR
-  Lot 6



DIAMOND/SOLDIER PROPERTIES LLC

Manager Delegation of Authority

Effective September 23, 2016

Diamond/Soldier Properties LLC (the "Company") is managed by a Manager as provided in the Company's Limited Liability Company Agreement (the "Agreement"). For efficient administration of the Company's affairs, however, the Manager is executing this document to appoint certain officers to assist in the administration of the Company's affairs. The Manager retains the right to manage the affairs of the Company as provided in the Company's Agreement. The Manager shall have the right to revoke this Delegation of Authority at any time, or to overrule any decision of any officer.

1. Officers.

1.129 Number, Election and Term. Officers of the Company shall be a President, a Vice President, a Secretary and a Treasurer, and may include such other officers as the Company may designate from time to time. Officers shall be appointed by the Manager from time to time. Each officer shall hold office until removed as provided below. Any one person may hold more than one office if it is deemed advisable by the manager.

1.130 Appointment of Officers. The Manager appoints the following persons to the offices designated below:

<u>Name</u>	<u>Office</u>
Greg Vik	President
Chris J. Pollak	Vice President
Jeff Anderson	Secretary and Treasurer

1.131 Resignation or Removal: Any officer or agent of the Company may resign from such position by delivering written notice of the resignation to the Company, but such resignation shall be without prejudice to the contract rights, if any, of the Company. Any officer or agent of the Company may be removed by the Manager, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. Election or appointment of an officer or agent shall not of itself create contract rights. Vacancies in any office caused by any reason may be filled by the manager by selecting a suitable and qualified person to act during the unexpired term.

1.132 Salaries. The compensation of all the officers, agents and other employees of this Company shall be fixed by the Manager and may be changed from time to time by the Manager.

1.133 President. The President shall have general charge and control of the day to day affairs of the Company subject to the ultimate control of the Manager of the Company, shall perform all duties as may be delegated from time to time by the Manager of the Company and shall make such reports to the Manager and the Members of the Company as may be required. The President shall be authorized to execute all documents on behalf of the Company.

1.134 Vice Presidents. The Vice President shall perform such duties as shall be assigned by the president or Manager of the Company. In the case of absence, disability or death of the President, the Vice Presidents shall perform and be vested with all the duties and powers of the President, until the President shall have resumed such duties or the President's successor is elected. In the event there is more than one Vice President, the Manager of the Company may designate one of the Vice Presidents as a Senior Vice President, who, in event of the absence, disability or death of the President shall perform such duties as shall be delegated by the Manager of the Company. Each Vice President shall also have authority to execute documents on behalf of the Company and bind the Company.

1.135 Secretary. The Secretary shall keep a record of the proceedings at the meetings of the Members of the Company, shall have custody of all the books, records and papers of the Company, except such as shall be in charge of the Treasurer or some other person authorized to have custody or possession thereof, shall from time to time make such reports to the Manager, the officers and the Members of the Company as may be required, and shall perform such other duties as the Manager of the Company may from time to time delegate. In addition, if no Treasurer is elected, the Secretary shall perform all the duties required of the Office of Treasurer.

1.136 Treasurer. The Treasurer shall keep accounts of all monies of the Company received or disbursed, shall from time to time make such reports to the Manager, the officers and the Members of the Company as may be required, and shall perform such other duties as the Managers of the Company may from time to time delegate. The Treasurer shall have authority to execute banking documents required for the operation of the business of the Company.

2. Liability; Indemnification. None of the Company's officers or agents shall be liable to the Company, the Manager or the Members for any act or omission based upon errors of judgment, negligence, or other fault in connection with the business or affairs of the Company so long as the person against whom the liability is asserted acted in good faith on behalf of the Company and in a manner reasonably believed by such person to be within the scope of his or her authority under this Agreement and in the best interests of the Company, but only if such action or failure to act does not constitute gross negligence or willful misconduct. The Company agrees to indemnify the Company's officers and agents to the fullest extent permitted by law and to save and hold them harmless from and in respect of all (a) fees, costs, and expenses incurred in connection with or resulting from any claim, action, or demand against the company or any of its agents that arise out of or in any way relate to the Company, its properties, business, or affairs and (b) such claims actions and demands and any losses or damages resulting from such claims, actions and demands, including amounts paid in settlement or compromise (if recommended by attorneys for the Company) of any such claim, action or demand; provided, however, that this indemnification shall apply only so long as the person against whom a claim, action or demand is asserted has acted in good faith on behalf of the Company and in a manner reasonably believed by such person to be within the scope of its authority and in the best interests of the Company, but only if such action or failure to act does not constitute gross negligence or willful misconduct. The termination of any action, suit, or proceeding by judgment, order, settlement, or upon a plea of nolo contendere or its equivalent, shall not of itself create a presumption that any person acted with gross negligence or willful misconduct. The rights of any officer or agent under this paragraph are in addition to any rights such person may have under any other agreement with the Company or any affiliate of the Company.

The Manager of the Company hereby approves this Manager Delegation of Authority.

MANAGER:

INVESTMENTS MANAGER LLC

By:  _____

Greg Vik, President

Hersley, Jean

From: Greg Sullivan <greg.sullivan@brockwayeng.com>
Sent: Friday, May 22, 2020 8:28 AM
To: Hersley, Jean
Subject: RE: Lease Contract for Diamond/Soldier Properties

Jean,

Lease contract 1183 for water right 36-23227 will not be signed and submitted to IDWR by Diamond/Soldier Properties. The parcel of ground (Lot 6) in which water right 36-23227 is located has been sold. Diamond/Soldier Properties no longer own the parcel (Lot 6) or water right 36-23227.

Greg Sullivan
Brockway Engineering
2016 North Washington Street, Suite 4
Twin Falls, Idaho 83301
208-736-8543

All information, calculations, maps, drawings, or other documents transmitted via e-mail are preliminary unless explicitly stated in the e-mail text or in the documents themselves.

From: Hersley, Jean [mailto:Jean.Hersley@idwr.idaho.gov]
Sent: Thursday, May 21, 2020 1:41 PM
To: Greg Sullivan <greg.sullivan@brockwayeng.com>
Subject: Lease Contract for Diamond/Soldier Properties

Greg,

The Department received the signed contracts for water right 36-23226 today. Is Contract 1183 for water right 36-23227 close behind?

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

Hersley, Jean

From: Greg Sullivan <greg.sullivan@brockwayeng.com>
Sent: Thursday, April 9, 2020 8:24 AM
To: Buyer, Remington; Hersley, Jean
Cc: 'Rod Gonsales'; 'Nancy Lukacs'
Subject: RE: 37-23227

Remington,

I was unaware of the status of the lease applications and have not received my CC copies of the prepared lease contracts. It is understandable if the lease contract for 37-23327 has already been mailed out for signature that the Water Supply Bank will be unable to refund the \$250 processing fee. The intent of DIAMOND/SOLDIER PROPERTIES LLC is to not lease 37-23227 into the Water Supply Bank at this time.

The lease of 37-23226 for Lot 3 will be signed and returned to the Water Supply Bank.

Greg Sullivan
Brockway Engineering
2016 North Washington Street, Suite 4
Twin Falls, Idaho 83301
208-736-8543

All information, calculations, maps, drawings, or other documents transmitted via e-mail are preliminary unless explicitly stated in the e-mail text or in the documents themselves.

From: Buyer, Remington [mailto:Remington.Buyer@idwr.idaho.gov]
Sent: Wednesday, April 08, 2020 5:05 PM
To: Greg Sullivan <greg.sullivan@brockwayeng.com>; Hersley, Jean <Jean.Hersley@idwr.idaho.gov>
Cc: Rod Gonsales <camascreek@hughes.net>; 'Nancy Lukacs' <nancyl@pistolcreek.com>
Subject: RE: 37-23227

Greg,

The Department charges lease application filing fees for the processing of a lease application. Processing of lease applications 1686 and 1688 (for water rights 37-23226 and 37-23227) was completed on April 2nd and lease contracts were issued for signature by Diamond/Soldier Properties LLC on April 3rd. Because application processing has been completed, we won't be refunding the application filing fees for these applications.

If Diamond K wishes to no longer lease water right 37-23327 to the Bank, they can decline lease contract of 1183. Please advise if this is their intent, so that we may finalize our records associated with lease application 1688.

Thank you,

Remington Buyer
Water Supply Bank Coordinator
Idaho Department of Water Resources
322 East Front Street, Boise, ID, 83720

T: (208) 287-4918 | F: (208) 287-6700

From: Greg Sullivan [<mailto:greg.sullivan@brockwayeng.com>]
Sent: Wednesday, April 8, 2020 2:17 PM
To: Buyer, Remington <Remington.Buyer@idwr.idaho.gov>; Hersley, Jean <Jean.Hersley@idwr.idaho.gov>
Cc: Rod Gonsales <camascreek@hughes.net>; 'Nancy Lukacs' <nancyl@pistolcreek.com>
Subject: 37-23227

Jean and Remington,

I was informed today the Lot 6 in the Danielson Subdivision has a potential buyer and that the property is under a purchase and sale contract. Therefore, we are requesting that water right 37-23227 is not leased into the Idaho Water Supply Bank at this time. Please refund the \$250 processing fee if possible.
If there is additional information that you require of DIAMOND/SOLDIER PROPERTIES LLC please let me know.

Thank you,

Greg Sullivan
Brockway Engineering
2016 North Washington Street, Suite 4
Twin Falls, Idaho 83301
208-736-8543

All information, calculations, maps, drawings, or other documents transmitted via e-mail are preliminary unless explicitly stated in the e-mail text or in the documents themselves.



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 E Front Street, Suite 648 • PO Box 83720 • Boise ID 83720-0098

Phone: (208) 287-4800 • Fax: (208) 287-6700

Website: idwr.idaho.gov • Email: idwrinfo@idwr.idaho.gov

BRAD LITTLE
Governor

GARY SPACKMAN
Director

April 3, 2020

DIAMOND/SOLDIER PROPERTIES LLC
PO BOX 1607
BELLEVUE WA 98009

RE: APPLICATION TO LEASE WATER RIGHT 37-23226 & 37-23227 TO THE WATER SUPPLY BANK CONTRACT 1182 & 1183

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

Dear Applicant:

The Department of Water Resources has completed its review of your application to lease the above-mentioned water right to the Water Supply Bank. **I have enclosed two of each original Water Supply Bank Lease Contracts for your review and signature. Please sign and return ALL Lease Contracts within 14 days.** Upon signature and return of the contracts, the Department will also sign the original contracts and return an executed copy to you. The Lease Contract is not considered final until you and the Department have both signed.

The right will automatically be released from the Bank on **December 31, 2024**, unless the right is released earlier by the Board, or upon your request. To release the right from the Bank prior to the release date, submit a written request on the Request to Release a Water Right from the Bank form. To propose a new lease period, submit a new Application to Sell or Lease a Water Right to the Water Supply Bank form along with applicable fees to the Department. These forms are available from any IDWR office or from our public website at <http://www.idwr.idaho.gov>. Please note your right may not be available for immediate release if it has been rented.

Please review the conditions of acceptance listed on the Lease Contract, including #3 which says: "While a right is in the bank, **the lessor may not use the right** without approval of the department even if the right is not rented from the bank. Any violation of the terms of this lease may result in enforcement procedures pursuant to Idaho Code § 42-351 for illegal diversion and use of water and may include civil penalties pursuant to Idaho Code § 42-1701B."

If you have questions regarding this matter, please contact this office at bank@idwr.idaho.gov or 208-287-4800.

Sincerely,

Water Supply Bank

Enclosures: Proposed Lease Contracts

c. Speck & Aanestad PC
Brockway Engineering PLLC

WATER SUPPLY BANK

Lease Review Checklist

Applicant(s) Name: Diamond/Soldier Properties LLC

Memo Date: April 1, 2020

Water Right Number(s): 37-23226 & 37-23227

Reviewers Name: Jean

Quick Tools

Decreed Year	No Forfeiture Concerns Thru:
2011	2017
2012	2018
2013	2019
2014	2020
2015	2021

		Check box		COMMENTS/CONCERNS:
1	Fill out WSB Data Entry Checklist for Leases (Front of File)	x		
2	Reason for lease of water rights (Brief description of lease proposal in narrative)			
	Portion of right			
	All of right	x		
3	Check GWMA/CGWA/ADC and basin 63 areas of concern (note area in comments)			
		Yes	No	
4	Rentable? (if no explain in comments or narrative)	x		
5	Authority to file			
	Current owner or designated applicant	x		
	SOS Web site checked for business entity	x		
	Other (explain in comments)			
6	Water Right validity			
	Decreed/Licensed/Statutory claim date (write in comments section)			2008
	Past irrigation to ensure forfeiture is not an issue if decreed or licensed over 7 years ago (consider transfers that changed the POU, rentals to the POU etc.)			
	Has this right previously been leased to the bank or in CREP?			2014-2019
7	Injury to other water rights			
	If the POD is through a delivery entity, was consent provided?		na	
	If the POD is through a delivery entity, was holdback required? (percentage in comments)			%
	Any other concerns	x		
8	Enlargement concerns	Check box		
	Complete a POU comparison overlap analysis	x		
	Complete a combined limits review	x		
	Complete POD overlap analysis (if there is an overlap add condition to lease)	x		
		Yes	No	
	Are there overlapping rights that need to be placed in the bank also?		x	
	Will the place of use continue to receive water? (if yes explain in comments)			
9	Local Public Interest			
	Does the processor know of any problems this action will cause for the local public?		x	
10	Have you contacted regional office and watermaster for comment/concerns?	x		
	Send the watermaster comment request form or e-mail request	x		
11	Area Headgate requirement (write in Comments)			3.5
12	Is water right involved in any other department action? Pull file and check database () Ownership Change () Transfer () Mitigation () Other - Explain in comments		x	
13	Narrative: The Department received these applications on March 25, 2020. These rights were split from 37-570A but left in Diamond/Soldier Properties LLC name. These rights are for two separate lots. Lot 3 and Lot 6. There are no rights that overlap these rights. The parent of these rights were decreed in 2008 and was placed in the Bank in 2014-2019. There are no issues with forfeiture. These rights are currently within WD 37B.			