



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

May 21, 2020

JAMES L HARTVIGSEN
120 S 800 E
CENTERVILLE UT 84014

RE: WITHDRAWAL OF APPLICATIONS TO LEASE WATER RIGHT NO. 29-14278, 29-14279 & 29-14280 TO THE WATER SUPPLY BANK

Dear Applicant:

Per an emailed request received on May 7, 2020, from David B. Hartvigsen, the Department of Water Resources ("Department") acknowledges your request to withdraw your Lease Applications for the rights listed above. A refund has been requested and will be mailed to Smith Hartvigsen, PLLC within 10 days.

If you have any questions, please contact me at (208) 287-4942.

Sincerely,

A handwritten signature in black ink that reads "Jean Hersley". The signature is fluid and cursive.

Jean Hersley
Technical Records Specialist II

Enclosure: Lease Application(s)

c: David B Hartvigsen- Smith Hartvigsen PLLC

STATE OF IDAHO
WATER RESOURCE BOARD

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

RECEIVED
APR 10 2020
DEPARTMENT OF
WATER RESOURCES

Designated Applicant James L. Hartvigsen

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

Water Right No. 29-14280

(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 | <input type="checkbox"/> | <input checked="" type="checkbox"/> | Signatures and contact information for all owners of the water right to be leased or sold on this application. |
| 1B | <input type="checkbox"/> | <input checked="" type="checkbox"/> | An <u>Internal Revenue Service (IRS) Form W-9</u> for the Designated Applicant. |
| 1C | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <i>Notice of Change in Water Right Ownership</i> form (accessible from www.idwr.idaho.gov). |
| 1D | <input type="checkbox"/> | <input checked="" type="checkbox"/> | 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 | <input checked="" type="checkbox"/> | <input type="checkbox"/> | Description of a water right portion offered to the Water Supply Bank. |
| 3 | <input type="checkbox"/> | <input checked="" type="checkbox"/> | 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 | <input checked="" type="checkbox"/> | <input type="checkbox"/> | Written consent from irrigation district or water delivery company. |
| 4G | <input type="checkbox"/> | <input checked="" type="checkbox"/> | 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>500.00</u> | Received By: <u>KM</u> | Date Received: <u>4-10-2020</u> | Receipt # <u>C108587</u> |
| W-9 received? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> (Route W-9 to Fiscal) | | Name on W-9: <u>James L Hartvigsen</u> | |

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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 James L. Hartvigsen

Mailing Address 120 South 800 East Centerville Utah 84014
Street City State Zip Code

Email Address jhartvigsen@comcast.net Phone Number 801-804-1611

☐ 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 David B. Hartvigsen Organization Smith Hartvigsen, PLLC

Professional Title Attorney Email Address david@SHutah.law

Mailing Address 257 East 200 South, Suite 500, Salt Lake City, UT 84111 Phone Number 801-413-1600

☐ 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.
Water is diverted from Aspen Creek into a ditch to be used to flood irrigate the designated land under Water Right No. 29-14280.
- 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. Water Right Nos. 29-14278 and 29-14279. Additional Applications to Sell or Lease a Water Right are being filed for these listed water rights.
- 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. ~~The full amount of water under Water Right No. 29-11280 has been used in each of the last 5 years to the extent available and to the extent that it has not been participating in the federal CRP Program~~
- 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. _____
- 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.

James L. Hartvigsen
Signature of Designated Applicant

James L. Hartvigsen
Printed Name

2/15/20
Date

David B. Hartvigsen
Signature of Authorized Representative

David B. Hartvigsen
Printed Name

4/1/2020
Date

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

**STATE OF IDAHO
WATER RESOURCE BOARD**

ATTACHMENT 1A

Additional Water Right Holders Party to the Lease Application

For the water right on this application, list all owners (individuals or business entities) of the right or the property to which it is appurtenant. All water right holders must sign a Water Supply Bank Lease Application. However, only the Designated Applicant needs to provide a completed IRS Form W-9 (Attachment 1B). **All correspondence and any financial payment associated with the rental of this water right will be directed to the Designated Applicant.** If additional space is needed to list any other water right holders, attach a second copy of Attachment 1A.

If submitting multiple applications, it is only necessary to complete one Attachment 1A for the group of applications. List each water right below.

Water Right No(s). 29-14278, 29-14279, 29-14280

| | Designated Applicant | Applicant #2 | Applicant #3 |
|-----------------------|--|---|---|
| Name | James L. Hartvigsen | Kim R. Hartvigsen | Rulon Hartvigsen Eric |
| Mailing Address | 120 South 800 East Coeurville Utah 84014 | 1210 North 100 East Layton, Utah 84041 | P.O. Box 53 Malden, Idaho 83252 |
| Phone Number | 801-809-1611 | 801-628-5657 | 520-730-0869 |
| Email Address | JHartvigsen@Comcast.net | Kim.H@dmba.com | eric.hartvigsen@gmail.com |
| Applicant Declaration | As Designated Applicant, I submit this lease application on behalf of all other water right holders. | I authorize the Designated Applicant to submit this application on my behalf. | I authorize the Designated Applicant to submit this application on my behalf. |
| Signature | James L. Hartvigsen | Kim R. Hartvigsen | R. Eric Hartvigsen |

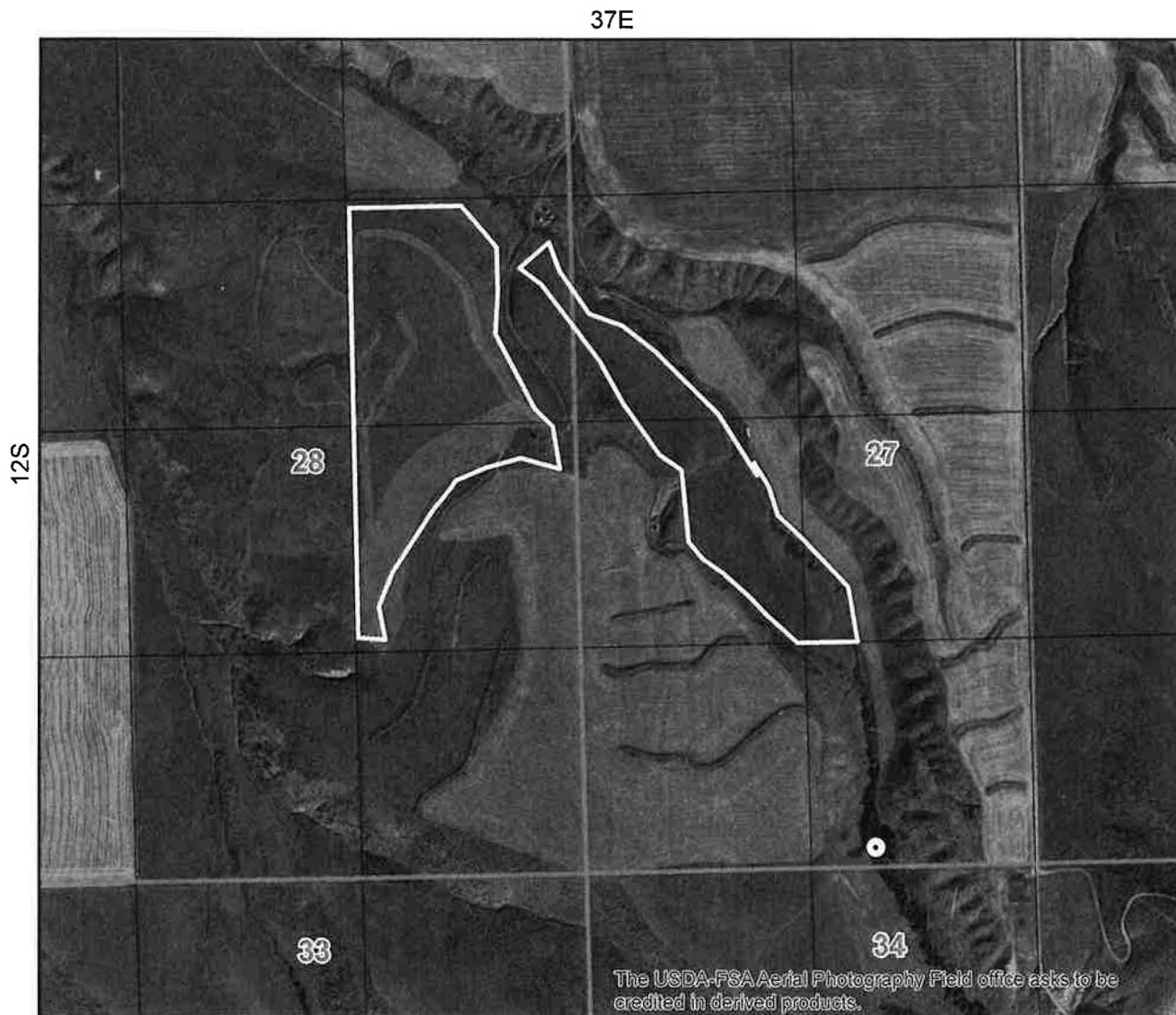
| | Applicant #4 | Applicant #5 | Applicant #6 |
|-----------------------|---|---|---|
| Name | | | |
| Mailing Address | | | |
| Phone Number | | | |
| Email Address | | | |
| Applicant Declaration | I authorize the Designated Applicant to submit this application on my behalf. | I authorize the Designated Applicant to submit this application on my behalf. | I authorize the Designated Applicant to submit this application on my behalf. |
| Signature | | | |

State of Idaho
Department of Water Resources

Water Right
29-14280

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.



- Point of Diversion
- Place Of Use Boundary

- Townships
- PLS Sections
- Quarter Quarters

0 0.125 0.25 0.5 Miles



AFFIDAVIT OF JAMES L. HARTVIGSEN

STATE OF UTAH }
 : ss.
COUNTY OF DAVIS }

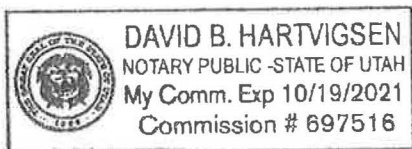
I, James L. Hartvigsen, hereby declare under oath and the penalty of perjury:

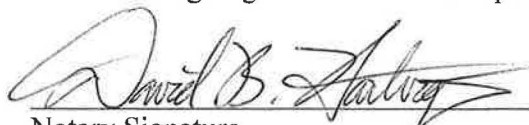
1. I am over the age of eighteen and have personal knowledge about the matters addressed herein.
2. I am a part owner of Idaho Water Right Nos. 29-11278, 29-11279, and 29-11280, which permit the diversion of water from Aspen Creek to irrigate 62 acres ("**Aspen Creek Rights**").
3. The Aspen Creek Rights are also owned by Kim R. Hartvigsen and Rulon Eric Hartvigsen.
4. Kim, Eric, and I acquired the Aspen Creek Rights in 2008.
5. Since 2008, we have routinely diverted and used all available water under the Aspen Creek Rights each year to farm the authorized 62 acres of land to the extent that this acreage was not participating in, and protected against nonuse by, the federal Conservation Reserve Program ("CRP").
6. We have retained and authorized Smith Hartvigsen PLLC to be our legal counsel and authorized representative in connection with this application.

DATED this 2nd day of April, 2020.


James L. Hartvigsen

On this 2nd day of April, 2020, James L. Hartvigsen personally appeared before me and, being duly sworn, acknowledged to me that he voluntarily executed the foregoing document for the purposes stated therein.




Notary Signature

MEMORANDUM

TO: Sascha Marston
FROM: Jean Hersley
DATE: May 20, 2020
RE: **Refund: WSB Lease Applications withdrawn**

Please refund \$500.

NAME: SMITH HARTVIGSEN PLLC
257 E 200 S STE 500
SALT LAKE CITY UT 84111

RECEIPT #: C108589

Thank you.

Jean

Hersley, Jean

From: David B. Hartvigsen <david@water.law>
Sent: Thursday, May 7, 2020 3:17 PM
To: Hersley, Jean
Cc: Dr. James L. Hartvigsen
Subject: RE: Water Supply Bank Lease Applications for 29-14278-14280
Attachments: CRP Contract 961.pdf

Hi Jean.

Attached is a copy of the CRP contract that you requested (CRP Contract No. 961). As you can see from the contract, it's a 10-year contract that's expiring at the end of this coming September. James, Kim, and Eric Hartvigsen, doing business as Hartvigsen Brothers, have been pursuing the renewal of their soon to expire CRP contract with the Farm Service Agency at the same time as they have been applying to participate in the Water Supply Bank with the Department of Water Resources. It has recently become apparent that the Farm Service Agency will not be able to renew the CRP contract on this particular tract of land (Tract No. 8136). Therefore, the Hartvigsen Brothers will be resuming crop production on this land this fall and accordingly need to utilize Water Right Nos. 29-14278, 29-14279 & 29-14280 once again. Therefore, please accept this letter as an official withdrawal of their application to participate in the Water Supply Bank with respect to these three water rights.

Please let me know if you have any questions.

Thanks.

David B. Hartvigsen
SMITH HARTVIGSEN PLLC
801-413-1600
801-231-2240 cell
david@water.law

From: Hersley, Jean <Jean.Hersley@idwr.idaho.gov>
Sent: Tuesday, April 21, 2020 9:05 AM
To: jhartvigsen@comcast.net
Cc: David B. Hartvigsen <david@shutah.law>
Subject: Water Supply Bank Lease Applications for 29-14278-14280

The Department of Water Resources(Department) is in the process of reviewing your applications to place water rights 29-14278, 29-14279 & 29-14280 in the Water Supply Bank(Bank). On your applications, you stated that the water rights have been used in the last 5 years to the extent available and to the extent they have not been participating in the CRP program. Would you mind sending me a copy of the contract for the CRP Program? It will help in determining what years and what acres were involved in the program and protected from forfeiture. Please let me know if you have any questions. Thank you.

Jean Hersley
Technical Records Specialist II

Idaho Dept Water Resources
(208) 287-4942



April 6, 2020

DAVID B. HARTVIGSEN
david@water.law

Idaho Department of Water Resources
PO Box 83720
Boise, ID 83720-0098

RECEIVED

APR 10 2020

DEPARTMENT OF
WATER RESOURCES

Re: Applications to Lease Water Rights to the Water Supply Bank

Enclosed please find five completed Applications to Lease a Water Right to the Water Supply Bank. These applications are for two groups of virtually identical water rights (only the priority dates are different). Accordingly, I understand that only two \$500 filing fees are required, one for each group. If this is incorrect, please let me know. Also, please feel free to contact me if you need anything else or have any questions.

Sincerely yours,
SMITH HARTVIGSEN, PLLC



David B. Hartvigsen

Enclosures

cc: James L. Hartvigsen w/ enclosures

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