



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

February 28, 2019

ROBERT CIMINO
PO BOX 363328
SAN JUAN PR 00936-3328

**RE: APPLICATION TO LEASE WATER RIGHT NO(S). 37-23109
TO THE WATER SUPPLY BANK**

Dear Applicant:

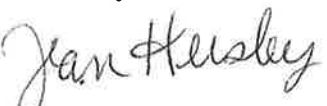
The Department of Water Resources ("Department") has completed its review of the application to lease water right 37-23109 to the Water Supply Bank ("Bank") in the name of Robert Cimino. Based on our review, the Department cannot accept water right 37-23109 into the Bank.

Water has not been diverted under water right 37-23109 since it was decreed by the Snake River Basin Adjudication Court in 2011. It has been proposed that because the water right owner was unaware that they needed to take an action to protect the water right from forfeiture, the water right has not been forfeited. The Department does not find this to be a compelling defense against forfeiture. As such, the application to lease water right 37-23109 to the Water Supply Bank is being denied and the filing fee is being 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 forfeiture is a concern, you may also consider filing an Application for Extension of Time to Avoid Forfeiture of a Water Right.

If you have any questions, please contact me at (208) 287-4910.

Sincerely,


for Clay Webster
Water Rights Supervisor

C: Brockway Engineering PLLC

STATE OF IDAHO
WATER RESOURCE BOARD

RECEIVED

FEB 07 2019

DEPARTMENT OF
WATER RESOURCES

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

Designated Applicant Robert Cimino

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

Water Right No. 37-23109

(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 \$ 25000Received By: NKDate Received: 2/7/19Receipt # C106335W-9 received? Yes ☒ No ☐

(Route W-9 to Fiscal)

Name on W-9:

Robert A. Cimino

1340

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 Robert Cimino

Mailing Address P.O. Box 363328 San Juan PR 00936-3328

Street

City

State

Zip Code

Email Address _____

Phone Number 787-381-3339

☒ 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 Zach Latham

Organization Brockway Engineering PLLC

Professional Title Hydrologist

Email Address zach.latham@brockwayeng.com

Mailing Address 2016 Washington St. N Suite #4 Twin Falls, ID 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.
The point of diversion listed under 37-23109 can not physically deliver water to applicant's property. Applicant only recently learned of ownership of 37-23109 as notified by IDWR in late 2017. See 4.G.below.
- 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. 37-8079.
- 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. 37-8079 will be used to irrigate property as 37-23109 is not deliverable due to actions of others on lands of others.
- 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. N/A, see 4.G. below.
- 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. Applicant was made aware in 2017 that a portion of parent water right 37-22255 was appurtenant to applicant's property. Therefore, applicant is taking appropriate steps to protect right from forfeiture as 37-23109 cannot physically be delivered to applicant's property due to conveyance ditches being filled in, on lands between point of diversion and applicant's property.
- 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 ☒
N/A.

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: 2019 to 2020 (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

Robert Cimino

Printed Name

1/23/2019

Date

Signature of Authorized Representative

Printed Name

Date

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

**STATE OF IDAHO
WATER RESOURCE BOARD**

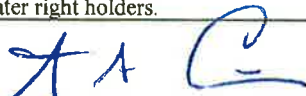
ATTACHMENT 1A

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). 37-23109

	Designated Applicant	Applicant #2	Applicant #3
Name	Robert Cimino		
Mailing Address	P.O. Box 363328 San Juan PR 00936-3328		
Phone Number	787-381-3339		
Email Address			
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			

	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
37-23109

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 0.1 0.2 0.4 Miles



MEMORANDUM

TO: Sascha Marston
FROM: Jean Hersley
DATE: March 15, 2019
RE: **Refund: WSB Lease- Denied for Cimino**

Please refund \$250.

NAME: BROCKWAY ENGINEERING PLLC
2016 N WASHINGTON ST STE 4
TWIN FALLS ID 83301

RECEIPT #: C106235

Thank you.

Jean

Hersley, Jean

From: Zach Latham <zach.latham@brockwayeng.com>
Sent: Tuesday, March 12, 2019 11:12 AM
To: Hersley, Jean
Cc: Keen, Shelley; charles.g.brockway@brockwayeng.com; Robert Cimino
Subject: RE: WSB Lease Application for Cimino 37-23109
Attachments: Cimino Memo In Support of WSB Lease App 37-23109.pdf

Jean-

Attached is a memo in support of the Cimino 37-23109 WSB Lease application. We feel that due to the circumstances outlined and summarized in the attached memo, forfeiture is a non-concern based on Idaho Code 42-223.6, and 37-23109 should be eligible for lease to the WSB as proposed.

I will be out of town from 3/13 – 3/26/19 and will not be checking this email. Chuck Jr. can likely answer any questions or concerns you may have regarding this lease application and memo.
Thank you for your time and please let us know how and when IDWR will be proceeding with the processing of this WSB lease application.

Zach Latham

Hydrologist
Brockway Engineering, P.L.L.C.
2016 Washington Street North, Suite 4
Twin Falls, ID 83301
t. 208-736-8543
c.208-721-2114
f. 208-736-8506

zach.latham@brockwayeng.com

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: Tuesday, March 05, 2019 9:13 AM
To: Zach Latham
Subject: RE: WSB Lease Application for Cimino 37-23109

My apologies. Here you go.

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

From: Zach Latham [mailto:zach.latham@brockwayeng.com]
Sent: Tuesday, March 05, 2019 9:11 AM
To: Hersley, Jean <Jean.Hersley@idwr.idaho.gov>
Subject: RE: WSB Lease Application for Cimino 37-23109

Jean-

I didn't receive the attachment letter.
Can you please re-send with the attachment?
Thank you.

Zach Latham

Hydrologist
Brockway Engineering, P.L.L.C.
2016 Washington Street North, Suite 4
Twin Falls, ID 83301
t. 208-736-8543
c. 208-721-2114
f. 208-736-8506

zach.latham@brockwayeng.com

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: Tuesday, March 05, 2019 9:02 AM

To: Zach Latham

Subject: WSB Lease Application for Cimino 37-23109

This letter is going out in today's mail. Please let me know how your client would like to proceed.

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

Robert Cimino

Memo in Support of Water Supply Bank Lease Application; 37-23109

Brockway Engineering PLLC

Zach Latham, M.S., Hydrologist

March 12, 2019

The purpose of this memo is to present evidence in support of the Water Supply Bank (WSB) lease application filed by Brockway Engineering PLLC with IDWR on February 4th 2019 on behalf of Mr. Robert Cimino, owner of Big Wood River irrigation water right 37-23109. In a letter to Mr. Cimino (copy to Brockway Engineering) dated March 5th 2019, IDWR requested more information to justify the lease application filed on behalf of Mr. Cimino by Brockway Engineering which proposed to lease all of surface water right 37-23109 to the WSB for a five year time period.

37-23109 is authorized to be diverted from the Big Wood River for use on the Cimino Property located at River Grove Ranch Subdivision Lot 8, Blaine County Parcel number RP004950000080, 101 Mountain View Lane Hailey Idaho 83333. The two points of diversion (POD's) authorized under 37-23109 originate on lands owned by others to the north of the Cimino property, one located in T.02N. R.18E Section 5 SW $\frac{1}{4}$ NE $\frac{1}{4}$ on Flying Heart Ranch #1 Lot 2 owned by Mr. and Ms. Thomas Tierney known locally as River Grove Farm River Diversion, and the other located in T.02N. R.18E Section 5 SE $\frac{1}{4}$ NE $\frac{1}{4}$ on Flying Heart Ranch #2 Amended Lot 39A owned by Stenehjem Holdings LLC known locally as the outlet of the Lower Willis Pond. Historically, lands south and east of these two points of diversion were under common ownership and irrigated using one common surface water delivery system. Subsequent subdivision of these lands divided parcels in the area into multiple owners.

The parent water right of 37-23109 was 37-22255. 37-22255 was decreed on August 30th 2011 to Peter Trust LP. 37-22255 was decreed in the name of Peter Trust LP on lands owned by other parties, without those other parties' knowledge. Subsequently, changes of ownerships have been filed on portions of 37-22255 that were appurtenant to land owners other than Peter Trust LP. Parties who owned land within the decreed place of use of 37-22255 have had to rely on notification of ownership of a portion of 37-22255 through neighbors, consultants or otherwise. To our knowledge, IDWR did not notify Mr. Cimino, nor the previous owner, that a portion of 37-22255 was appurtenant to parcel.

Mr. Cimino took possession of Lot 8 of River Grove Ranch Subdivision on May 13th, 2014, as evidenced by a warranty deed for the property; this deed does not mention the conveyance of any water right to Mr. Cimino. It was not until the Fall of 2017 that the previous owner notified Mr. Cimino of his ownership of a portion of 37-22255. Subsequently, Mr. Cimino filed an ownership change with the Southern Region Office of IDWR on December 26th 2017. The ownership change was approved by IDWR on March 15th, 2018 and split 7.9 acres of 37-22255 into Mr. Cimino's name and renumbered his portion of what was then the parent right 37-22255, to 37-23109. It was on this date that Mr. Cimino took ownership of his rightful portion of 37-22255. Further, Brockway Engineering PLLC filed a WSB lease application less than a year later on February 4th, 2019 to protect 37-23109 from forfeiture due to the circumstances described below.

CIMINO, ROBERT

- 