



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 E FRONT ST STE 648 • PO BOX 83720 • BOISE ID 83720-0098

Phone: (208) 287-4800 • Fax: (208) 287-6700 • Website: idwr.idaho.gov

C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

March 20, 2018

CITY OF EAGLE
PO BOX 1520
EAGLE ID 83616

RE: WITHDRAWAL OF APPLICATION TO RENT WATER FROM THE WATER SUPPLY BANK

Dear Applicant:

Per your written request received on March 15, 2018 via e-mail, the Department of Water Resources (department) acknowledges your intent to withdraw your Application to Rent Water from the Water Supply Bank. Therefore, the department is returning your application.

Diversion and use of water is not authorized under the returned rental application. Any use associated with your proposed rental request is not authorized and, if occurring, will be subject to any necessary enforcement action.

If you wish to rent water in the future, please reapply using new forms from the Department's website at www.idwr.idaho.gov. If you have any questions regarding this matter, please contact me at (208) 287-4910.

Sincerely,

for Clay Webster
Water Resource Agent
WSB Process Point of Contact

Enclosure: Rental Application

C: Chereese D. McLain – MSBT Law

Thiel, Sandra

From: Cherese D. McLain <CDM@msbtlaw.com>
Sent: Thursday, March 15, 2018 3:02 PM
To: Thiel, Sandra
Subject: RE: City of Eagle water supply bank rental

Hi Sandra,

Sorry there has been such a delay in getting back to you. The City had to consult with its engineer and staff to determine whether we needed a water rental. This rental originated from a land development agreement with the original owners of WR 63-32960. The City has worked this out with the developer and based on a recently acquired permit, the City does not believe it needs to continue to rent water.

Is there a formal document you would like me to fill out to withdraw the City's application?

Thank you,

Cherese McLain



Cherese D. McLain
950 W. Bannock Street, Suite 520
Boise, ID 83702
Telephone: (208)331-1800
Facsimile: (208)331-1202
cdm@msbtlaw.com
www.msbtlaw.com

CONFIDENTIALITY, SIGNATURE, AND TAX DISCLOSURE NOTICE: This email, and any attachments, may contain information that is privileged, confidential and/or protected from disclosure under applicable law, and nothing contained therein shall be deemed to waive or diminish the protections afforded by such laws. **Do not:** (i) deliver, distribute copy, or disclose this transmission or its contents to any third party or business entity; or (ii) produce a copy of this e-mail in connection with any litigation without the advice of an attorney; or (iii) take any action in reliance on the information it contains. Printed copies of this e-mail should not be kept in your regular files. If you print a copy of this e-mail, place it in a separate file labeled "Attorney-Client Privilege". If you are not an intended recipient of this transmission, please notify the sender immediately and delete the original message without making any copies. Nothing in this communication is intended to constitute an electronic signature, unless a specific statement to the contrary is included in this communication. Nothing contained in this email was intended or written to be used, or can be used by any taxpayer for the purpose of avoiding penalties that may be imposed on such taxpayer under the Internal Revenue Code of 1986, as amended.

From: Cherese D. McLain
Sent: Tuesday, March 13, 2018 1:51 PM
To: Cherese D. McLain <CDM@msbtlaw.com>
Subject: FW: City of Eagle water supply bank rental

From: Thiel, Sandra [<mailto:Sandra.Thiel@idwr.idaho.gov>]
Sent: Thursday, February 22, 2018 8:48 AM
To: Cherese D. McLain <CDM@msbtlaw.com>
Subject: City of Eagle water supply bank rental

Good morning. I am processing the City of Eagle's water supply bank rental application. On the application you identified water right 63-32960. The land to which that right is appurtenant has changed ownership and it has not been determined how much of the right will be available to rent. I have found other rights I believe will satisfy this rental. The application specifies a desired rate of 2.0 cfs and 342.9 acre feet, but no acres. Can you tell me which element is more important, the rate or the volume? The city may have to rent more volume to achieve the desired rate. However, that will cost more since the fees are based on the volume.

Sandra Beer Thiel

Idaho Department of Water Resources

322 East Front Street

Boise, Idaho 83720-0098

(208)287-4881

sandra.thiel@idwr.idaho.gov

STATE OF IDAHO
WATER RESOURCE BOARD

RECEIVED

DEC 28 2017

DEPARTMENT OF
WATER RESOURCESAPPLICATION TO RENT WATER
FROM THE BOARD'S WATER SUPPLY BANKApplicant Name: City of Eagle

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

Yes ☐ No ☒

If yes, specify companion water rights in Section 4

This application must be completed according to the minimum requirement checklist below. This checklist is part of the rental application and must be included with the rental application. Applications that do not meet the minimum requirements will not be placed in the processing queue and may be returned until all minimum requirements have been met.

Rental applications should be submitted well in advance of the desired start date for the use of rental water. Rental applications may be processed as early as November 1 of the year prior to the intended use of rental water. Any rental application received on or before November 1 for use in the next year will be assigned a received date of November 1. Rental applications submitted more than one year in advance of the proposed start date for the use of rental water will not be accepted and will be returned to applicants. Rental applications may be returned to applicants if the desired start date for the use of rental water cannot be accommodated by the Water Supply Bank. Rental requests will not be accepted once the rental season of use period has concluded.

One rental application per beneficial use of water. For multiple beneficial uses of water, separate rental requests should be submitted for each unique beneficial use of water. One rental application can be submitted if you propose to rent water from multiple sources.

For additional instructions on completing a rental application, visit the Bank's website at http://idwr.idaho.gov/water_supply_bank.

MINIMUM REQUIREMENT CHECKLIST

Check All Items as Either Attached (Yes) or Not Applicable (N/A)

		Yes	
		☒	Completed <i>Application to Rent Water from the Board's Water Supply Bank</i>
		☐	Confirmation that this form has been printed single sided, per requirement of the Water Supply Bank
Attachment	N/A	Yes	
2		☒	A map showing the proposed point(s) of diversion, place(s) of use, and water diversion and distribution systems proposed to be used with your rental request
3A	☐	☒	Detailed information on a proposed use of rental water
3F	☐	☒	Authorization from the owner/operator of the rental point(s) of diversion
3H	☒	☐	Water modeling to account for the impacts of the rental request
3J	☒	☐	Documents justifying a rate of flow greater than 0.02 cfs/acre
3K	☒	☐	Authorization from the owner/operator of the property at the proposed rental place(s) of use
4B	☐	☒	Explanation of how the rental water will sufficiently accomplish your rental purposes
4C	☒	☐	Explanation of consumptive use amounts for water rights experiencing a change in nature of use

Department Use Only – Proposed Water Right(s)

63-32960

957

**STATE OF IDAHO
WATER RESOURCE BOARD**

Application to Rent Water (Continued)

1. CONTACT INFORMATION

A. Applicant City of Eagle

Mailing Address P.O. Box 1520 Eagle Idaho 83616
Street City State Zip Code
 Email Address cdm@msbtlaw.com Phone Number 208-331-1800

B. Is this application being completed by an authorized representative on behalf of the applicant? Yes ☒ No ☐
 If yes, representatives (includes company employees if the applicant is a corporation, as well as legal counsel or consultants) should provide their information below if they desire to be included on correspondence with the rental applicant.

Representative Cherese McLain Professional Title City Attorney
 Organization MSBT Law Chtd. Relationship to Applicant Attorney
 Mailing Address 950 W. Bannock Ste 520
 Email Address cdm@msbtlaw.com Phone Number 208-331-1800

2. MAP

Create a map of the proposed point(s) of diversion, place(s) of use and water diversion, delivery and distribution systems. Make sure the rental 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 irrigate. Attach the map to this application and label it **Attachment 2**.

3. DESCRIPTION OF PROPOSED USE FOR RENTAL WATER

A. Describe why you desire to rent water and provide a detailed description of your proposed use. If the proposed use is not for irrigation, describe in detail how you determined the amount of rental water required. If the space below is insufficient, attach additional sheets as required and label them **Attachment 3A**:

To be used as part of the City of Eagle's municipal water system.

B. Enter the desired and/or minimum rates of flow, volume, or irrigable acres requested for your rental purposes:

Desired Rate (Cubic Feet/Second)	Desired Volume (Acre-Foot)	Minimum Rate* (Cubic Feet/Second)	Minimum Volume* (Acre-Foot)	Desired Acres (if applicable)
2.0 CFS	342.9 AF	CFS	AF	AC

* Sometimes water rights provide an exceptionally low rate per acre and/or low volume per acre. This section is meant to establish an acceptable range of water sufficient for your proposed water use. Please see question 4B and complete if necessary.

C. This section must be completed in full. Enter the proposed start date and latest possible start date for using rental water as well as the number of years you would like to rent water. The latest possible start is the latest possible date by which you would be willing to pay for a rental and be able to benefit from utilizing rental water.

Desired Start Date (month/day/year)	Latest Possible Start Date (month/day/year)	*Mark Desired Rental Duration (Calendar Years)					**Applicant's preference if rental application cannot be processed prior to the latest possible start?	
1/1/2018	4/15/2018	☒ 1	☐ 2	☐ 3	☐ 4	☐ 5	☒ Process application as soon as possible	☐ Return application to applicant

* The number of years permissible for a rental is subject to the lease contract duration for the water right(s) being rented.

** Per Idaho Code 42-201, it is unlawful to divert or use water without a valid water right. Water Supply Bank rental applicants are not authorized to utilize rental water prior to the execution of an approved rental agreement. Rental requests may be returned to applicants if no water is available from the Bank to fulfill a rental request.

STATE OF IDAHO
WATER RESOURCE BOARD

Application to Rent Water (Continued)

- D. Describe your water distribution system and how rental water will be delivered from the point(s) of diversion (POD) to the proposed place of use (POU):

Delivered through the City-owned distribution system with four constructed wells to service area of the City of Eagle municipal water supply system.

- E. Describe the physical type (pump, headgate, etc.) and location of the POD from which rental water is proposed to be diverted:

POD Description	Water Source	Other Water Rights Diverted from this POD
See attachment Ex. A		

If the POD(s) above are located where water is turned into a canal, lateral or ditch, or if they are located on your property but are serviced by water that is delivered via a canal, lateral or ditch, your rental request must include documented authorization from all relevant canal companies, irrigation districts and/or water delivery entities, confirming that they consent to your diversion of water from their system.

- F. Has documented consent from all relevant water delivery entities been obtained? Yes ☐ N/A ☒

If yes, include documented consent as **Attachment 3F**.

- G. Do any POD(s) identified in Question 3E divert from a water source that may require water modeling? Yes ☐ No ☒

Refer to the Water Modeling Requirements Information Sheet to determine if a rental POD may require water modeling.

- H. Has water modeling been provided with your rental request? Yes ☐ N/A ☒

If yes, label modeling Attachment 3 H.

Rental applications that require modeling will be returned if modeling is not provided.

- I. Specify the desired beneficial use of water and the requested season of use or number of acres required:

- ☐ Irrigation _____ (number of acres) Duration: Subject to IDWR standard seasons of use
- ☐ Commercial from: _____ (mm/dd) to: _____ (mm/dd)
- ☐ Stockwater from: _____ (mm/dd) to: _____ (mm/dd)
- ☐ Industrial from: _____ (mm/dd) to: _____ (mm/dd)
- ☒ Other: municipal from: 1/1 (mm/dd) to: 12/31 (mm/dd)

- J. For irrigation uses, do you propose to divert water at a rate greater than 0.02 cfs/acre? N/A ☒ Yes ☐ No ☐

If yes, justify the rate of flow and attach any supporting documents as **Attachment 3J**. Justification may include information on soil composition, conveyance losses, crop type, irrigation systems, public access areas, etc. A rate of 0.03 cfs/acre is permissible for irrigation of 5 acres or less.

- K. Do you own the land at the proposed rental place of use (POU)? Yes ☒ No ☐

If no, attach documentation from the POU owner/operator confirming your authorization to use the POU and label it **Attachment 3K**.

- L. List all other water rights and sources of water at the rental place of use for the same purpose, including privately owned water rights and water received from a municipal supplier, an irrigation district, a canal company or any other water delivery entity. Explain why additional water is required:

See Attachment Exhibit "A"; see also 5.A

STATE OF IDAHO
WATER RESOURCE BOARD

Application to Rent Water (Continued)

4. RENTAL REQUESTS FOR SPECIFIC WATER RIGHTS

A. Are you requesting to rent specific water rights?

Yes ☒ No ☐

If yes, specify below the elements of the water rights you are requesting to rent. If no, continue to Question 4B.

Important Information: Diversion rates and volumes sought for rent must be proportionate to the per acre diversion rates and per acre volume limits of the water right under lease contract to the Water Supply Bank. Prior to completing this section, applicants should review all water right lease contracts and any active rental agreements to determine which elements of a water right are available to satisfy a rental request. Lease and rental documents are searchable via [IDWR's website](#).

Water rights identified below must either already be leased to the Bank or a lease proposal should accompany this rental request. **Rental requests for water rights not yet leased to the Bank will be returned if companion lease applications are not provided with the rental request.** For leased rights featuring combined limits, rentals must be consistent with combined diversion rate, volume or acre limits. Combined limits should be listed on a row below water right numbers.

Water Right Elements Leased to Water Supply Bank					Leased totals, minus water right elements involved in active rental agreements, equals water right elements available for rent	Water Supply Bank Rental Request		
Water Right Number (leave blank if sub-total of combined limits)	Nature of Use	Diversion Rate (CFS)	Volume (AF)	Acres (AC)		Diversion Rate (CFS)	Volume (AF)	Acres (AC)
63-32960	municipal	2.0	342.90					
Applicants must ensure the requested rate per acre and volume per acre do not exceed the rate per acre and volume per acre limits of water rights leased to the Water Supply Bank					TOTAL			
						CFS	AF	AC

**Attach multiple copies of this page if space above is insufficient to list all water rights requested to be rented on this application.*

B. If water right conditions, combined limits, or the sum of all water right elements being requested provide an unconventional duty of water (e.g., an unusually low rate per acre or volume per acre for irrigation use), explain how your proposed rental will sufficiently accomplish your intended purposes. Attach a separate page if space is insufficient and label it **Attachment 4B**:

To be used as part of municipal water system. Do not believe this issue will occur.

C. Does your rental request propose to change the nature of use for any water right(s) being rented?

Yes ☐ No ☒

If yes, explain how the water right(s) will be converted to new uses. Include the historic, consumptive use amounts for the water right being rented if you have it, as well as the new consumptive use amount for your proposed beneficial use. If space below is insufficient, attach a separate page and label it **Attachment 4C**:

STATE OF IDAHO
WATER RESOURCE BOARD

Application to Rent Water (Continued)

5. ADDITIONAL INFORMATION

- A. Is this the first time that rental water is being requested for this purpose at the rental place of use? Yes ☐ No ☒

If no, list previous rental requests/agreements and explain why you have not secured a permanent water right for your needs:
Have had rental agreement with owner of water right 63-32960 since 2007. The City currently has two pending permits that have not licensed. This rental would be used as a supplement to current permits, if needed.

- B. Have you or do you intend to submit an application for permit or transfer proposing a similar use as this rental? Yes ☒ No ☐

If yes, describe:
City of Eagle applications for WR 63-33876 and 63-32089

- C. Was this rental application submitted in response to a Notice of Violation (NOV) or a pending NOV? Yes ☐ No ☒

If yes, describe the date and location of the NOV.

- D. Additional Information

DECLARATION

I hereby assert that the information contained in this application is true to the best of my knowledge. I understand that any willful misrepresentations made in this application may result in rejection of the application or cancellation of an approval. I understand that if this rental application is approved, it will be subject to the provisions of Section 42-1766, Idaho Code and all applicable state and federal laws. I understand that the submission of a rental application provides no guarantee for approval of a rental agreement. I also understand that, per Idaho Code 42-201, it is unlawful to divert or use water without a valid water right and that I am not authorized to utilize water as proposed in this application prior to the execution of an approved rental agreement.

Signature of Applicant



Printed Name of Applicant

Chere D. McLain

Date

12/28/17

Signature of Representative

Printed Name of Representative

Date

Mail to:

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

STATE OF IDAHO
WATER RESOURCE BOARD

Water Modeling Requirement Information Sheet

Information on water modeling requirements for rental requests within special administrative areas

Important information on requesting rental water within special administrative areas: Refer to the information below to determine whether the modeling of potential impacts from your rental request is necessary. Use Section 4 of the rental application to identify selected water rights. **If you submit an application to rent water from within a special administrative area and water modeling is required, your rental request will be returned if water modeling is not provided.**

Water modeling may be required when an application to rent water involves one of two scenarios:

Scenario 1: The rental request proposes to divert water from a regulated water source and/or within a special administrative area AND the distance between the rental point(s) of diversion (POD) and the POD(s) for the leased water right(s) is greater than the administratively established, acceptable distance.

Regulated water sources may areas include:

- A. Ground water resources within the modeled area of the Eastern Snake Plain Aquifer (ESPA) and tributary aquifers;
- B. Ground water within Ground Water Management Areas (GWMAs) or Critical Ground Water Areas (CGWAs);
- C. Water resources within other specified administrative areas, as established by the Idaho Water Resource Board (IWRB) or the Idaho Department of Water Resources.

The distance between any rental POD(s) and the POD(s) for a leased water right to be rented is important. On the ESPA, distance is measured in terms of model cells that cover an area of one square mile. Ground water modeling is not required if lease POD(s) and rental POD(s) are located within the same model cell or within adjacent model cells. If the lease and rental PODs are separated by more than one model cell groundwater modeling must be completed using the IDWR ESPA Transfer Tool and modeling results must be submitted with the rental application. ESPA modeling tools can be accessed and freely downloaded from IDWR's website by visiting: www.idwr.idaho.gov/WaterManagement/WaterRights/WaterRightTransfers/resources.htm.

Ground water modeling may be required within GWMAs, CGWAs or other regulated administrative areas. Applicants who desire to rent water within an established GWMA, CGWA or other regulated administrative area should consult IDWR's website before submitting their application to review the current status of administrative orders related to regulated administrative areas. Consult www.idwr.idaho.gov/WaterInformation/GroundWaterManagement/designated_areas.htm for information on GWMAs or CGWAs, visit <https://idwr.maps.arcgis.com/home/> to use mapping tools to find other regulated areas.

Applicants interested in renting water within a GWMA, CGWA or other regulated administrative areas should request water rights that have been leased into the Bank from within the same administrative area. Generally, the Bank will not permit a rental of water within a regulated administrative area if the leased water rights are not located within that same administrative area.

Scenario 2: A rental request proposes to divert water from a different but hydraulically connected water source.

Modeling situations may include:

- A. Rental requests that propose to divert surface water rights via ground water POD(s) (wells); and
- B. Rental requests that propose to divert ground water from one aquifer when the right being rented authorizes the diversion of ground water from a hydraulically connected, tributary aquifer.

Rental requests that propose to divert surface water rights from ground water points of diversion may be considered if ground water modeling establishes that the surface and ground water resources are directly and immediately hydraulically connected. An acceptable hydraulic connection occurs when at least 50 percent of the total depletions from a well are detectable from the original water source within a 24 hour period. The existing (leased) POD and proposed (rental) POD must be proximate such that diversion and use of water from the proposed POD would have substantially the same effect on the hydraulically-connected source as diversion and use of water from the original POD.

Requests to rent ground water across tributary aquifer sources may be considered if ground water modeling is provided to demonstrate that two aquifers are hydraulically connected and the anticipated impacts of diverting ground water from one source through the other is modeled accordingly.

For more information about rental application requirements, contact IDWR at (208) 287-4800.

EXHIBIT "A"

CITY OF EAGLE

APPLICATION TO RENT WATER FROM WATER SUPPLY BANK

POINTS OF DIVERSION	DIVERTING WORKS (Capacity/Depth of Well)
SWSW, Section 3, T04N, R01E (Lexington #1)	n/a
SWSW, Section 4, T04N, R01E (Brookwood)	n/a
SEnw, Section 11, T04N, R01W (Legacy)	n/a
NWSE, Section 11, T04N, R01W (constructed well)	2000 gpm/430 ft.



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098

Phone: (208) 287-4800 • Fax: (208) 287-6700 • Website: www.idwr.idaho.gov

C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

February 27, 2018

CITY OF EAGLE
PO BOX 1520
EAGLE ID 83616

RE: Application to Rent Water Right 63-32960 from the Water Supply Bank

Dear Applicant:

On December 28, 2017 you submitted an application to rent water from the Water Supply Bank. On the application, you identified right 63-32960 as the proposed rental right. The City of Eagle rented this right from 2013 through 2017. At this time, right 63-32960 is not leased into the Water Supply Bank. It is not certain it will be leased into the Bank for 2018.

I was able to find other possible water rights to satisfy your rental application. However, I noticed that the City had a private agreement with water right holder Cloud Berry LLC for previous Bank transactions. This agreement allowed you to pay only the 10 percent administrative fee. Without an agreement between the lessor and renter, the renter would be required to pay the full \$20 per acre foot. Please contact me and let me know how you want to proceed.

If you have any questions, please contact me at 208.287.4881 or sandra.thiel@idwr.idaho.gov. If I do not hear from you within 30 days, by March 29, I will assume that you are no longer interested in renting water and return your application.

Sincerely,

Sandra Thiel
Sr. Water Resource Agent

Enclosure – Copy of Rental Application
c. Cherese McClain - MSBT Law Chtd.