



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 • Web Site: www.idwr.idaho.gov

GARY SPACKMAN
Director

C.L. "BUTCH" OTTER
Governor

June 14, 2016

DEWAYNE BILLS
DBA REAL ESTATE INVESTORS LLC
3200 S MONTEGO WAY
NAMPA ID 83686

**RE: DENIAL OF APPLICATION(S) TO LEASE WATER RIGHT NO(S). 63-32975 TO THE
WATER SUPPLY BANK**

Dear Applicant:

On April 8, 2016, the Department of Water Resources (Department) received your application(s) to lease water right 63-32975 to the Water Supply Bank (Bank). Water Supply Bank Rule 25 (also known as IDAPA 37.02.03.025) requires the Department to evaluate whether the water right has been lost through abandonment or forfeiture as defined by Section 42-222(2), Idaho Code. Section 42-222(2) states, in part, "All rights to the use of water acquired under this chapter or otherwise shall be lost and forfeited by a failure for the term of five (5) years to apply it to the beneficial use for which is was appropriated."

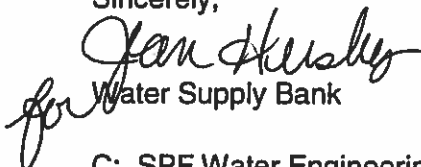
A review of aerial photography between 2009 and 2015 shows no evidence of irrigation on the acres proposed to be leased to the Bank. Water right 63-32975 is supplemental to water delivered by the Nampa Meridian Irrigation District. If water from NMID wasn't available, this water right should have been utilized.

Because of this evidence of more than five years of non-use, the requirements of Water Supply Bank Rule 25 cannot be met and the attached lease application(s) is **denied**. If you can provide additional information to show beneficial use has occurred, please resubmit the application with the additional information within 30 days in order to incur no additional filing fee. Department resources were expended in order to provide a full review of your applications. Therefore, the lease application filing fees will not be refunded.

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 form(s) available from the Department's website at www.idwr.idaho.gov.

If you have any questions regarding this matter, please contact this office at (208) 287-4800.

Sincerely,


for Water Supply Bank

C: SPF Water Engineering LLC
IDWR Western Regional Office

STATE OF IDAHO
WATER RESOURCE BOARD

RECEIVED

APR 08 2016

DEPARTMENT OF
WATER RESOURCESAPPLICATION TO SELL OR LEASE A WATER RIGHT
TO THE WATER SUPPLY BANKDesignated Applicant DeWayne A. Bills (dba Real Estate Investors LLC)
(Select one owner - see item 1A on the application)Water Right No. 63-32975
(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 \$ <u>250.00</u>	Received By: <u>ELC</u>	Date Received: <u>4/8/16</u>	Receipt # <u>C101826</u>
W-9 received? Yes ☒ No ☐	(Route W-9 to Fiscal)	Name on W-9: <u>DEWAYNE A BILLS</u>	

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 DeWayne A. Bills c/o David A. Bills

Mailing Address <u>3400 S. Montego Way</u>	<u>Nampa</u>	<u>ID</u>	<u>83686</u>
Street	City	State	Zip Code

Email Address _____ Phone Number (208) 465-1600

☒ 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 A. Bills Organization _____

Professional Title _____ Email Address _____

Mailing Address 3400 S. Montego Way, Nampa, ID 83686 Phone Number (208) 465-1600

☒ 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.

This supplemental right does not currently have a diversion and delivery system. The diversion and delivery system was removed during the development of the business park subdivision.

- 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. The primary source of supply is delivered by Nampa & Meridian Irrigation District (NMID).

- 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. NMID will continue to supply the original place of use. This supplemental water right will only be available for rent to provide a supplemental source of supply without enlargement.

- 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. Supplemental source of supply. Past use unknown (See Item G).

- 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. Pursuant to Idaho Code Section 42-223 (6), this water right is supplemental to NMID deliveries. The original place of use has been in development as a business park subdivision since 2007. Subdivision development stalled during the recent economic downturn and NMID irrigation water has not been delivered since curbs and roadways were installed and subdivision development slowed.

- 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: 2016 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

David A. Bills, Designated Agent
Printed Name

4-5-16
Date


Signature of Authorized Representative

David A. Bills
Printed Name

4-5-16
Date

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

IDAHO STATUTORY FORM POWER OF ATTORNEY

IMPORTANT INFORMATION

This power of attorney authorizes another person (your agent) to make decisions concerning your property for you (the principal). Your agent can make decisions and act with respect to your property (including your money) whether or not you are able to act for yourself. The meaning of authority over subjects listed on this form is explained in the uniform power of attorney act, chapter 12, title 15, Idaho Code. This power of attorney does not authorize the agent to make health care decisions for you. You should select someone you trust to serve as your agent. The agent's authority will continue until your death unless you revoke the power of attorney or the agent resigns. Your agent is entitled to reasonable compensation unless you state otherwise in the Special Instructions.

This form provides for designation of one (1) agent. If you wish to name more than one (1) agent, you may name a co-agent in the Special Instructions. Co-agents are not required to act together unless you include that requirement in the Special Instructions. If your agent is unable or unwilling to act for you, your power of attorney will end unless you have named a successor agent. You may also name a second successor agent.

This power of attorney becomes effective immediately unless you state otherwise in the Special Instruction.

If you have questions about the power of attorney or the authority you are granting to your agent, you should seek legal advice before signing this form.

DESIGNATION OF AGENT

I, DeWAYNE A. BILLS, name the following person as my agent:

Name of Agent: DAVID A. BILLS
Address: 3400 S. Montego Way, Nampa, Idaho 83686
Phone Number: 208-465-1600

DESIGNATION OF SUCCESSOR AGENT(S) (OPTIONAL)

If my agent is unable or unwilling to act for me, I name as my successor agent:

Successor Agent: CARRIE J. BILLS
Address: 3400 S. Montego Way, Nampa, Idaho 83686
Phone Number: 208-465-1600

If my successor agent is unable or unwilling to act for me, I name as my second successor agent:

Second Successor Agent: MICHAEL D. BILLS
Address: 1821 N. 28th St., Boise, Idaho 83703
Phone Number: 208-866-0448

GRANT OF GENERAL AUTHORITY

I grant my agent and any successor agent general authority to act for me with respect to the following subjects as defined in the uniform power of attorney act, chapter 12, title 15, Idaho Code:

(INITIAL each subject you want to include in the agent's general authority. If you wish to grant general authority over all of the subjects you may initial "All Preceding Subjects" instead of initialing each subject.)

- | | |
|-------------------------------------|--|
| ☐ | Real Property |
| ☐ | Tangible Personal Property |
| ☐ | Stocks and Bonds |
| ☐ | Commodities and Options |
| ☐ | Banks and Other Financial Institutions |
| ☐ | Operation of an Entity or Business |
| ☐ | Insurance and Annuities |
| ☐ | Estates, Trusts, and Other Beneficial Interests |
| ☐ | Claims and Litigation |
| ☐ | Personal and Family Maintenance |
| ☐ | Benefits from Governmental Programs or Civil or Military Service |
| ☐ | Retirement Plans |
| ☐ | Taxes |
| ☒ | All Preceding Subjects |

GRANT OF SPECIFIC AUTHORITY (OPTIONAL)

My agent MAY NOT do any of the following specific acts for me UNLESS I have INITIALED the specific authority listed below:

(CAUTION: Granting any of the following will give your agent the authority to take actions that could significantly reduce your property or change how your property is distributed at your death. INITIAL ONLY the specific authority you WANT to give your agent.)

- ☐ Create, amend, revoke, or terminate an inter vivos trust
- ☐ Make a gift, subject to the limitations of the uniform power of attorney act, chapter 12, title 15, Idaho Code, and any special instructions in this power of attorney
- ☐ Make a gift without limitations except any special instructions in this power of attorney
- ☐ Create or change rights of survivorship
- ☐ Create or change a beneficiary designation
- ☐ Authorize another person to exercise the authority granted under this power of attorney
- ☐ Waive the principal's right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan
- ☐ Exercise fiduciary powers that the principal has authority to delegate

LIMITATION ON AGENT'S AUTHORITY

An agent that is not my ancestor, spouse, or descendant MAY NOT use my property to benefit the agent or a person to whom the agent owes an obligation of support unless I have included that authority in the Special Instructions.

SPECIAL INSTRUCTIONS (OPTIONAL)

On the following lines you may give special instructions:

EFFECTIVE DATE

This power of attorney is effective immediately unless I have stated otherwise in the Special Instructions.

NOMINATION OF CONSERVATOR (OPTIONAL)

If it becomes necessary for a court to appoint a conservator of my estate, I nominate the following person(s) for appointment:

Name of Nominee for conservator of my estate: DAVID A. BILLS
 Nominee's Address: 3400 S. Montego Way, Nampa, Idaho 83686
 Nominee's Phone Number: 208-465-1600

RELIANCE ON THIS POWER OF ATTORNEY

Any person, including my agent, may rely upon the validity of this power of attorney or a copy of it unless that person knows it is terminated or invalid.

SIGNATURE AND ACKNOWLEDGMENT

Your Signature: _____

Date: September 7, 2010

Your Name Printed: DeWAYNE A. BILLS

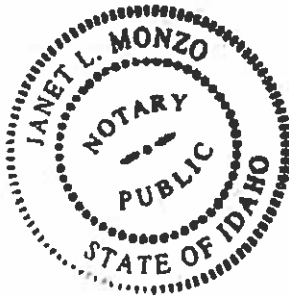
Your Address: 3200 Montego Way, Nampa, Idaho 83686

Your Phone Number: 208-465-7877

NOTARY - REQUIRED FOR RECORDING AND FOR REAL PROPERTY

State of Idaho)
) ss.
County of Ada)

On this 7th day of September, in the year of 2010, before me a Notary Public in and for the state of Idaho, personally appeared DeWAYNE A. BILLS, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.



Janet L. Monzo
Notary Public for Idaho
Residing at: Meridian, Idaho
My commission expires: 10-14-2015



Authorized Place of Use

2015 NAIP Photography

Water Right 63-32975 - IWSB Lease
Application



500

Feet



SPF WATER
ENGINEERING



SPF WATER
ENGINEERING

RECEIVED

APR 08 2016

DEPARTMENT OF
WATER RESOURCES

April 7, 2016

Remington Buyer
Idaho Department of Water Resources
322 E. Front St.
P.O. Box 83720
Boise, ID 83720-0098

Subject: IWSB Lease Application – Water Right 63-32975

Dear Remington:

Please find enclosed an *Application to Lease a Water Right to the Water Supply Bank* for water right 63-32975. Mr. DeWayne Bills has owned the subject water right since 2009; Mr. Bills' son David has signed the applications as authorized by the attached Power of Attorney document. We understand the filing fee for this process is \$250.00; you will find a check for that amount enclosed.

Please contact SPF at your convenience with any questions.

Sincerely,

A handwritten signature in blue ink that reads "Roxanne Brown".

Roxanne Brown
Senior Water Rights Specialist

cc: David Bills (Lanco)
SPF file 274.0030

Enclosures

IWSB Lease form
Power of Attorney
Check No. 2369