



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

May 17, 2015

TELFORD LANDS LLC
1450 W HWY 24
PAUL ID

**RE: APPLICATION TO LEASE AND RENT WATER RIGHT NOS. 34-2459 AND 34-2460
THROUGH THE WATER SUPPLY BANK**

Dear Applicant:

The Department of Water Resources ("Department") has completed its review of your application(s) to lease water right(s) to the Water Supply Bank ("Bank") and rent water rights from the Bank. Based on that review, the Department cannot accept water right(s) 34-2459 & 34-2460 into the Bank.

In accordance with Bank Rules, IDAPA 37.02.03, water rights may be leased to the Bank and made available for rent provided: the change does not cause injury to other right holders or enlargement of use of the water rights, and the change is in the local public interest. These criteria are used in evaluating whether it is appropriate to authorize the rental of a water right which has been leased to the Bank.

On April 16, 2015 the Department sent you a letter requesting information addressing public interest concerns as well as concerns about the omission of overlapping rights in this application package. As of the date of this letter you have provided no response to the Bank to address those concerns.

On April 23, 2015 the Department received a Temporary Change Application. This application was approved on April 28, 2015. This achieved the move that you had proposed in the Bank along with water right 34-10925.

This letter is notice that the attached application(s) to lease water to the Bank and rent those water rights from the Bank are **denied**.

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

Sincerely,

Clay Webster
Water Resource Agent
WSB Process Point of Contact

Enclosure: Lease Applications and Rental Applications

c: Robert L Harris – Holden Kidwell Hahn & Crapo

RECEIVED

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

JAN 20 2015
DEPARTMENT OF
WATER RESOURCES

An application to lease or sell a water right into the Water Supply Bank must be prepared in accordance with the minimum requirements listed below to be acceptable for processing by the Department. 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. **Incomplete applications will be returned to applicants for completion.**

DENIED

Designated Applicant Telford Lands LLC
(Select one owner – see item 1A on the application)

Water Right No. 34-2459
(One water right per application)

All items must be checked as either *Attached (Yes)* or *Not Applicable (N/A)*

YES

- ☒ Completed *Water Supply Bank Lease or Sale Application Checklist* (this form).
- ☒ Completed *Application to Sell or Lease a Water Right to the Water Supply Bank* (pages 2-3).
- ☒ 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.

Attachment N/A YES

- | | | | |
|----|-------------------------------------|-------------------------------------|--|
| 1A | ☒ | ☐ | Contact information for <i>all owners</i> of the water right that is being leased or sold on this application. |
| 1B | | ☐ | An <u>Internal Revenue Service (IRS) Form W-9</u> for the Designated Applicant. |
| 1C | ☒ | ☐ | <i>Notice of Change in Water Right Ownership</i> form (accessible from www.idwr.idaho.gov). |
| 1D | ☒ | ☐ | Written consent from irrigation district or water delivery company. |
| 1E | ☐ | ☒ | 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. |
| 3E | ☒ | ☐ | Evidence demonstrating that a water right has not been lost through abandonment or forfeiture pursuant to <u>Section 42-222(2), Idaho Code</u> . |
| 4 | | ☒ | 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 . |

Department Use Only

Fee Amount \$ <u>250.00</u>	Received By: <u>J. Strong</u>	Date Received: <u>1-20-2015</u>	Receipt # <u>C099837</u>
W-9 received? Yes ☐ No ☒ (Route W-9 to Fiscal)		Name on W-9:	

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

1. CONTACT INFORMATION

- A. An application to sell or lease a water right to the Water Supply Bank must be completed by a Designated Applicant who is a recognized owner of the water right being sold or leased to the Water Supply Bank. If there are additional owners recorded for the property to which the water right is appurtenant, 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 Telford Lands LLC Email Address telfordsunvalleyseed@gmail.com

Mailing Address 1450 W. Hwy 24 Phone Number 208 431-5957

☒ 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 completed an IRS Form W-9 (Attachment 1B)? Yes ☐ No ☒

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 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 1D).

E. 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 1E).

Name of Representative Robert L. Harris Organization Holden, Kidwell, Hahn & Crapo, PLLC

Professional Title Attorney Email Address rharris@holdenlegal.com

Mailing Address 1000 Riverwalk Dr., Idaho Falls Phone Number (208) 523-0620

☐ 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

Water Right Number 34-2459 ☒ 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 a water right is being offered, complete Attachment 2)

3. GENERAL INFORMATION

- A. Please provide a description of the current water diversion system.

Well and pump into private pipeline to the authorized place of use.

- B. 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.

34-2459, 34-2460, 34-2461, 34-2462, 34-10925, 34-7037, and 34-7138. The only water right that is also being offered to the WSB is 34-2460.

- C. Are any of the water rights identified in question 3B stacked with the water right proposed for lease? Yes ☒ No ☐

Stacked water rights are water rights that are utilized 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.

D. Will the present place of use continue to receive water from any other source? Yes ☒ No ☐

If yes, describe. From the other water rights listed above. This lease application and its associated rental application only purports to allow water to be used from two close-by wells to ensure authorization for 2015 irrigation season.

E. Has any portion of this water right undergone a period of five or more consecutive years of non-use? Yes ☐ No ☒

If yes, describe and attach Watermaster records or other evidence to demonstrate that the water right has not been lost through abandonment or forfeiture pursuant to Section 42-222(2), Idaho Code.

F. Is this water right involved in any other IDWR process such as an application for transfer or a mitigation plan? Yes ☐ No ☒

If yes, describe. _____

4. MAP

Plat map, survey map, or aerial photograph clearly showing the specific acres proposed to be idled by this lease application.

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: 2015 to 2015 (maximum lease period 5 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 provisions are stayed.
5. Acceptance of a water right into the Bank does not, in itself, confirm the validity of the water right or any elements of the water right.

Signature of Designated Applicant

Printed Name

Date

Robert L. Harris
Signature of Authorized Representative

ROBERT L. HARRIS
Printed Name

1/19/2015
Date

Mail to:

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

Edl, Michele

From: Rob Harris [rharris@holdenlegal.com]
Sent: Wednesday, April 22, 2015 2:28 PM
To: Edl, Michele
Subject: RE: 2015 WSB lease/rental

Michele:

Thanks for your letter. We will work on a response and get back to you.

Can you give me a status update on the other Telford water bank application—the one that we are simply trying to continue for another 5 years? (34-618 et al).

Thanks,

Rob Harris

From: Edl, Michele [<mailto:Michele.Edl@idwr.idaho.gov>]
Sent: Thursday, April 16, 2015 1:45 PM
To: telfordsunvalleyseed@gmail.com
Cc: Rob Harris
Subject: 2015 WSB lease/rental

Mr. Telford, Mr. Harris,

I have attached an early-bird copy of a letter which will be mailed from the state office tomorrow morning.

Respectfully,

Michele Edl

GARY SPACKMAN
Director

C.L. "BUTCH" OTTER
Governor

April 16, 2015

TELFORD LANDS LLC
1450 W HWY 24
PAUL ID 83347

RESPONSE DEADLINE

May 1, 2015

RE: Water Supply Bank Lease and Rental Application of Water Rights 34-2459, and 34-2460 – Additional Information Required

Dear Applicant:

On January 20, 2015 the Department of Water Resources (Department) received your applications to lease and rent water into and from the Water Supply Bank (WSB).

In accordance with Bank Rules, IDAPA 37.02.03, water rights may be leased to the Bank and made available for rent provided: the change does not cause injury to other right holders or enlargement of use of the water rights, and the change is in the local public interest. These criteria are used in evaluating whether it is appropriate to authorize the rental of a water right which has been leased to the Bank.

As part of my review of your application package, I sought comment from Compliance Bureau Chief, Tim Luke. Mr. Luke has responded to my request. He is opposed to approval of your proposed lease and rental package. He has two concerns.

- 1) He has received numerous complaints related to water use in this area. He has concerns about allowing this proposed lease-rental package to substitute for a transfer which requires public notice, while WSB processing typically does not.
- 2) Mr. Luke is also concerned that regulation of this proposed water use would not be possible. It appears that seven rights are commingled in a shared system but only two of the rights are included in this proposal. It is not clear from the lease-rental package why the other five rights, which are also appurtenant to the POU, are not involved in the lease and rental proposal. Nor is it clear how the Department will limit the water use from the two wells to 476 acres with the 1980 acre POU.

This letter is notice that your applications to lease and rent water right 34-2459 and 34-2560 cannot be processed until Mr. Luke's concerns are addressed.

Although I have been directed to give you additional time within which to respond to this letter, it may not be feasible to assemble the necessary documents at this time. So you may want to explore other options such as a "water right transfer" or a "temporary transfer." A "water right transfer" is the process which authorizes a change to a water

right's point of diversion, place of use, period of use, and/or nature of use. A "temporary transfer" can be utilized to change point of diversion, place of use, or purpose of use of a water right upon declaration of a drought emergency, in accordance with Idaho Code 42-222A.

You requested use of this water for the 2015 irrigation season, which began on April 1, 2015 in your area. Please note that any diversion in connection with this rental application is not authorized and diverting water prior to receiving an executed rental agreement is cause for a notice of violation.

I will place your application on hold in order to give you an opportunity to submit additional information. Please provide information addressing Mr. Luke's concerns within fourteen (14) days. If I have not received your response on or before May 1, 2015, your applications will be denied.

If you have any questions regarding this matter, please contact me at (208) 287-4946.

Sincerely,

A handwritten signature in cursive script, appearing to read "Michele Edl", written in dark ink.

Michele Edl

ec: Rob Harris
rharris@holdenlegal.com

Luke, Tim

From: Luke, Tim
Sent: Saturday, April 11, 2015 4:32 PM
To: Edl, Michele
Cc: Palmer, Cherie; Keen, Shelley; Buyer, Remington
Subject: Telford WSB Lease/Rental

Michele,

I have reviewed the Telford 2015 WSB Lease/Rental package involving water rights 34-22459 and 34-2460. I offer the following comments and questions:

1. Telford is merely using the WSB lease/rental to add two points of diversion to the two rights above. Does IDWR WSB policy commonly allow users to use the WSB for adding wells or POD's to water rights as opposed to requiring a transfer. I don't quite understand why we would allow this arrangement instead of or in lieu of a transfer.
2. The rental POU is for 1980 acres that have seven different appurtenant ground water rights, including the two rights referenced above. Why is Telford only adding the two additional wells to rights 34-2459 and 34-2460, and not the other five water rights? Shouldn't we require the other five rights to be included in the lease/rental package? Perhaps alternatively, the rental POU should be limited to 476 acres only, which is the acre limit under rights 34-2459 and 34-2460 (238 acres for each right). I would not suggest this alternative because rights 34-2459 and 34-2460 are used with the other five rights in one big POU, and all seven rights share the same POD's. I believe all the water is commingled into a shared system so I don't see how one could limit or regulate the two additional wells to be used on only 476 acres within the maximum 1980 acre POU.
3. I looked at the 2014 WMIS volumes for the rights on the permissible POU. It looks like Telford is irrigating only about 1628 acres out of the total 1980 acres. The well volumes from the four wells for the seven rights and 1980 acres were also well under the water right volume limits. The 2014 volume for permit 34-2486 and one of the wells to be added through this WSB transaction (Mark's Well), was 356 acre feet, which is under the maximum volume limit for the 200 acres authorized under the permit (the permit POU is a stand-alone system and POU, separate from the seven gw rights used on the 1980 acre POU).
4. Your memo of 4/10/2015 states that ground water rights in Basin 34 or this area of Basin 34 are not subject to watermaster control. This is not correct, all ground water rights in Basin 34 (except de-minimis domestic and stock) are subject to watermaster control; ground water wells are actively measured by the water district and the district makes assessments against ground water rights based on water use.

My Recommendation:

I **do not recommend approving** this WSB lease/rental package based on my concerns or observations expressed in items 1 and 2 above. At a minimum, I think IDWR should understand why the other ground water rights that are appurtenant to the 1980 acre rental POU are not included in the lease/rental package, or else require the other rights to be included in an amended lease/rental application package. Additionally, I suggest IDWR could not even consider processing any WSB transactions merely to add POD's since a water right transfer seems to be the more appropriate process to accomplish that objective.

Based on the numerous complaints and concerns made to me by Big Lost users over the past few years involving particularly water use in this area of the Big Lost near Arco, and including specific complaints alleged against Mr. Telford, I am concerned that this WSB lease/rental package may be an attempt by Mr. Telford to cut some corners and delay a transfer application that really should be subject to advertisement and a normal review process. My opinion may be counter to WSB policy, but given the sensitivity in this area, I feel we should not use the WSB to add PODs to water

rights but rather adhere to the wright transfer process. Seems like we are just doubling our workload by doing WSB transactions that are followed by a transfer.

Tim

MEMORANDUM

To: Water Right No(s): 34-2459 and 34-2460

From: Michele Edl

Date: April 11, 2015

Re: Review of Applications to Lease and Rent Water Rights through the State Water Supply Bank

PURPOSE/NARRATIVE: On January 20, 2015, IDWR received applications to lease and rent the above rights to the WSB for 2015 season. The applications were submitted by Robert Harris (attorney with Holden Kidwell Hahn & Crapo) on behalf of Telford Lands, LLC.

This is a self-serve water use package. The applicant proposes to lease and rent the entirety of both rights to and from the WSB with no changes to the authorized POU for the rights. The purpose of these lease-rentals is to add two diversion points to the two PODs already authorized for these two rights.

Transfer 78363 (a.k.a. 77933), which would have acted on both of the above rights, was withdrawn on January 20, 2015. The transfer proposed changes to the PODs and delivery systems for both the upper and lower Telford Lands farms. This WSB lease-rental package involves only the lower farms and is intended to bridge the 2015 irrigation while another less complex transfer proposal is drafted and provided to IDWR.

AUTHORITY TO FILE: According to IDWR's database, the current owners of the water rights are Telford Lands, LLC. Telford Lands, LLC. is listed with ISOS as W23489.

Rob Harris signed the applications. He is the authorized representative for Telford Lands, LLC. According to available Butte County taxlot information, the POU is property owned by Telford Lands, LLC.

The two proposed rental PODs are existing wells located on properties which are owned by the Telford family. One well (the Big Hole well) is not an authorized POD for any water right. But it has been used for previous WSB rentals. It is WMIS well 1001749.

The other POD (Mark's well) is the preliminary POD for draft licensed right 34-2486. It is a WMIS well with tag A0003601.

The two authorized lease PODs for WR 34-2459 and 34-2460 are also the authorized PODs for 34-2461, 34-2462, and 34-10925. They are also WMIS wells and are identified as A0010087, Isom North Well and A0010086, Isom South Well. They will continue to act as diversion points for all five rights.

WATER RIGHT VALIDITY: Water right 34-2459 and water right 34-2460 were decreed on December 16, 1997 through the SRBA. Both were decreed with the same two points-of diversion.

Both rights are limited to 238.0 acres within the same 1980-acre PPU. A review of aerial photography shows regular irrigation of the POU. Forfeiture is not an issue.

INJURY TO OTHER WATER RIGHTS: No injury is apparent. The lease PODs and the proposed rental PODs are located within adjacent ESPA grid cells. ESPA modeling of the impact was not required.

ENLARGEMENT OF USE: No enlargement is evident. Other rights are authorized to irrigate the POU and to divert from the lease PODs. Existing combined use limits will be maintained on the lease contracts and the rental agreement.

LOCAL PUBLIC INTEREST: Transfer 78363 (a.k.a. 77933) was withdrawn because it proposed moving PODs further up the Big Lost River valley and the Director had denied a similar protested transfer on May 29, 2014. (See Transfer 77610 in the name of Parkinson Farms.)

This lease-rental package doesn't change the POU. It authorizes the applicant to access 2 additional PODs which are on property managed by the applicant.

Review staff has no information to suggest this application is inconsistent with the local public interest.

BENEFICIAL USE/CONSERVATION OF WATER RESOURCES: The lease appears consistent with the conservation of water resources in Idaho.

DEPARTMENT STAFF OR WATERMASTER COMMENTS: The rights are not subject to watermaster control. However, because management of water in B34 the Big Lost River basin been subject to several recent protests, I have consulted with Bureau Chief, Tim Luke about this lease-rental package. He is opposed to this lease-rental package.