



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" OTTIE
Governor

GARY SPACKMAN
Director

February 26, 2015

RICHARD F SMITH
PO BOX 8
REXBURG ID 83440

RE: REFUND FOR WITHDRAWN LEASE APPLICATION W/R 22-2175A SUBMITTED TO THE WATER SUPPLY BANK

Dear Lessor:

On February 23, 2015 the Department of Water Resources (Department) received your request to cancel the existing Water Supply Bank (Bank) Lease Application submitted on December 23, 2014. **At this time the Department acknowledges that the Bank Lease Application has been withdrawn from the Bank at the request of your attorney Mr. Rigby.**

A refund of your lease application fee has been submitted to fiscal department. You will receive a refund of \$250 in a separate warrant for the lease application fee for Water Right 22-2175A.

The five (5) year period of nonuse related to forfeiture of a water right shall begin to accrue upon release of the right from the bank or shall continue to accrue if a period of nonuse occurred prior to the lease date of the right to the bank.

You can reapply to lease the water right(s) in the future by submitting new application form(s) from the Department's website at www.idwr.idaho.gov along with applicable fees.

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

Sincerely,

Clay Webster
Water Resource Agent
WSB Process Point of Contact

c: Jerry Rigby – Rigby, Andrus & Rigby Law

STATE OF IDAHO
WATER RESOURCE BOARD

RECEIVED

DEC 23 2014

DEPARTMENT OF
WATER RESOURCESWATER SUPPLY BANK LEASE OR SALE
APPLICATION CHECKLIST

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.**

Designated Applicant Richard F. SmithWater Right No. 22-2175A
One water right per applicationAll 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. If you are submitting more than one lease application and the water rights have a common place of use, or common diversion rate, or common diversion volume, the combined maximum fee is \$500.00.

Attachment N/A YES

- 1A ☐ ☒ Contact information for *all owners* of the water right that is being 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 ☒ ☐ 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.
- 3D ☒ ☐ Evidence demonstrating that a water right has not been lost through abandonment or forfeiture pursuant to Section 42-222(2), Idaho Code.
- 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. If you don't already have a detailed map, you can create one using IDWR's online General Mapping Tool (<http://maps.idwr.idaho.gov/mapall/>) to locate a water right place of use or point of diversion.

Department Use Only

Fee Amount \$ 500.00Received By: [Signature]Date Received: 12-23-14Receipt # C099744W-9 received? Yes ☒ No ☐

(Route W-9 to Fiscal)

Name on W-9: Richard F. Smith

STATE OF IDAHO
WATER RESOURCE BOARDRECEIVED
DEC 23 2014
DEPARTMENT OF
WATER RESOURCESAPPLICATION 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 Richard F. Smith Email Address rfsmith@cableone.net
Mailing Address P.O. Box 8, Rexburg, ID 83440 Phone Number 208-390-7000

☒ 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 _____ Organization _____
Professional Title _____ Email Address _____
Mailing Address _____ Phone Number _____

☐ 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 22-2175A ☒ 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.
In recent years, the pivots and irrigation equipment has been removed due to intended development of the
lands upon which the water is authorized to be applied

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.
The only water rights used for the same purpose are also being placed into the water bank

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

If yes, describe. _____

D. 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. _____

E. 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. SALE/LEASE AGREEMENT

A. Is the water right, or portion thereof, offered to the Idaho Water Resource Board (IWRB) for sale ☐ or lease ☒?

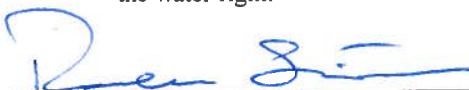
If lease, for a period from 12/24/2014 to 12/31/2015 (maximum lease period 5 years).
(Month / Day / Year) (Month / Day / Year)

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.

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

Richard F. Smith
Printed Name

12/18/2014
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
Department of Water Resources

Water Right
22-2175A

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
-  Taxlots

0 0.075 0.15 0.3 Miles





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February 26, 2015

RICHARD F SMITH
PO BOX 8
REXBURG ID 83440

**RE: REFUND FOR WITHDRAWN LEASE APPLICATION W/R 22-2175A SUBMITTED TO
THE WATER SUPPLY BANK**

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

Sincerely,

Christine Field

for Clay Webster
Water Resource Agent
WSB Process Point of Contact

c: Jerry Rigby – Rigby, Andrus & Rigby Law



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

Sincerely,

Clay Webster
Water Resource Agent
WSB Process Point of Contact

c: Jerry Rigby – Rigby, Andrus & Rigby Law

MEMORANDUM

To: Water Right No. 22-2175A
From: Pam Skaggs 
Date: 02/23/2015
Re: Withdrawn Application to Lease Water Rights to the State Water Supply Bank

PURPOSE/NARRATIVE: This application was received on December 23, 2014. The entire right is proposed leased to the bank for the 2015 irrigation season. Use of the 1960 irrigation right has been reduced to accommodate subdivision development. The place of use is within the service boundary of the City of Rexburg municipal water rights and within the Madison Ground Water District.

WATER RIGHT VALIDITY: A partial decree was issued for this right in 2008 and irrigation appears to have occurred in years following. No forfeiture concerns at this time.

AUTHORITY TO FILE: The applicant Richard F. Smith is the currently authorized water right owner per Department records and the SRBA Partial Decree. The application and the required fee (Receipt ID: C099744) was submitted by Mandy Davis, assistant to attorney Jerry Rigby.

Property within the place of use is owned by multiple owners according to 2013 Madison County tax records available through ArcMap taxlot layer. Information requested from the applicant to verify that ownership of the right was retained separate from the land was not submitted.

An email from Jerry Rigby on February 23, 2015 explained that Mr. Smith does not have documentation that verifies he retained the water right separate from the sale of land. Mr. Rigby advised this lease application should be withdrawn.

Skaggs, Pam

From: Jerry Rigby RAR <jrigby@rex-law.com>
Sent: Monday, February 23, 2015 1:59 PM
To: Skaggs, Pam
Subject: RE: Water Supply Bank Lease Information Request - 22-2175A

Pam,
I am so sorry for taking so long to reply. I have had a bad time getting in touch with Richard Smith. I have now discovered that he does NOT have the verification that water WAS retained for the lands on the west side. In other words, although you have accepted the lease for the 40 acres, we understand that the balance of the application should be withdrawn.
Thanks

Jerry R. Rigby
Rigby, Andrus & Rigby Law, PLLC
P.O. Box 250
25 N. 2nd E.
Rexburg, ID 83440
208-356-3633
Fax (208-356-0768)

From: Skaggs, Pam [mailto:Pam.Skaggs@idwr.idaho.gov]
Sent: Friday, February 13, 2015 1:48 PM
To: rfsmith@cableone.net
Cc: jrigby@rex-law.com
Subject: RE: Water Supply Bank Lease Information Request - 22-2175A

Mr. Smith,

The letter I sent you on January 27th noted I would withhold the lease application from processing for 14 days to allow time to gather the requested information. We have reached the end of that time now and I have not received any additional ownership information for Right 22-2175A.

Please advise me of the status of your lease request. Are you still interested in pursuing the lease and providing the necessary ownership documents? If the required information is not submitted the lease may be denied and the right will not be protected from forfeiture.

I look forward to hearing from you.

Pam

Pam Skaggs
Water Rights Supervisor
(208) 287-4951

From: Skaggs, Pam
Sent: Tuesday, January 27, 2015 9:26 AM
To: 'rfsmith@cableone.net'
Cc: 'jrigby@rex-law.com'
Subject: Water Supply Bank Lease Information Request - 22-2175A & 22-2175B

Mr. Smith,

I have requested additional information related to ownership of the rights you have proposed for lease to the Water Supply Bank. The letter will be dropped in the mail today, but since you had provided an email address I also sent you an e-copy to provide more time for you to respond.

Please let me know if you have any questions regarding the request.

Pam

Pamela S. Skaggs
Water Rights Supervisor
Idaho Department of Water Resources
322 E Front St
PO Box 83720
Boise ID 83720-0098
Phone (208) 287-4951
Fax (208) 287-6700

Skaggs, Pam

From: Cefalo, James
Sent: Thursday, January 29, 2015 4:48 PM
To: Skaggs, Pam
Subject: RE: Eastern Region Comment Request - WSB Lease 22-2175B (part) Smith

Pam,

I don't have any concerns with the Smith water rights (22-2175A or 22-2175B) being accepted into the WSB. We are working with Mr. Smith and Mr. Rigby to get water right 22-7502 licensed. It is located nearby, in the SWSE of Section 32, T06N, R40E. We recently came across some other ground being irrigated by Mr. Smith without a water right. I was going to notify Jerry Rigby of the unauthorized acres in our next conversation about licensing. We may find that Mr. Smith ends up renting his own rights out of the bank to cover the violation acres in 2015.

James

From: Skaggs, Pam
Sent: Thursday, January 29, 2015 4:23 PM
To: Cefalo, James
Subject: Eastern Region Comment Request - WSB Lease 22-2175B (part) Smith

James,

This is one of two leases from Mr. Smith. He is also proposing to put all of 22-2175A in the Bank pending ownership documentation showing he retained ownership of the water right when he sold the land for development. A document was submitted for 22-2175B, so I am moving forward.

I have attached the application map labeled 22-10021 that was renumbered to 22-2175B. Only the SWSW is proposed leased.

Let me know if you have any comments or concerns.

Pam

Pam Skaggs
Water Rights Supervisor
(208) 287-4951

Skaggs, Pam

From: Skaggs, Pam
Sent: Thursday, January 29, 2015 8:02 AM
To: 'Jerry Rigby RAR'
Cc: 'rsmith@cableone.net'
Subject: RE: Water Supply Bank Lease Information Request - 22-2175A & 22-2175B

Jerry,

Thank you for your prompt response in this matter. The deed you have submitted is representative of the required documentation conveying property from the right holder to the new property owner and clearly reserving the water rights. I will hold the applications as noted in my letter at least until February 10th to allow time for all the documents to be submitted.

Pam

Pam Skaggs
Water Rights Supervisor
(208) 287-4951

From: Jerry Rigby RAR [mailto:jrigby@rex-law.com]
Sent: Thursday, January 29, 2015 7:45 AM
To: Skaggs, Pam
Subject: FW: Water Supply Bank Lease Information Request - 22-2175A & 22-2175B

Pam,
Attached please find a copy of the recorded deed to one parcel of land which is subject to the water banking application. We are in the process of locating the balance of the land's deed.
As you can see from this deed, the water rights were clearly reserved.
Thanks

Jerry R. Rigby
Rigby, Andrus & Rigby Law, PLLC
P.O. Box 250
25 N. 2nd E.
Rexburg, ID 83440
208-356-3633
Fax (208-356-0768)

From: Skaggs, Pam [mailto:Pam.Skaggs@idwr.idaho.gov]
Sent: Tuesday, January 27, 2015 9:26 AM
To: rsmith@cableone.net
Cc: jrigby@rex-law.com
Subject: Water Supply Bank Lease Information Request - 22-2175A & 22-2175B

Mr. Smith,

I have requested additional information related to ownership of the rights you have proposed for lease to the Water Supply Bank. The letter will be dropped in the mail today, but since you had provided an email address I also sent you an e-copy to provide more time for you to respond.

Please let me know if you have any questions regarding the request.

Pam

Pamela S. Skaggs
Water Rights Supervisor
Idaho Department of Water Resources
322 E Front St
PO Box 83720
Boise ID 83720-0098
Phone (208) 287-4951
Fax (208) 287-6700



State of Idaho

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GARY SPACKMAN
Director

C.L. "BUTCH" OTTER
Governor

January 27, 2015

RICHARD F SMITH
PO BOX 8
REXBURG ID 83440

**RE: APPLICATION(S) TO LEASE A WATER RIGHT TO THE WATER SUPPLY BANK
FOR WATER RIGHT NO(S). 22-2175A (All) & 22-2175B (Part)**

******TIME SENSITIVE RESPONSE REQUIRED******

Dear Lessor:

The Department of Water Resources received applications to Lease Water Rights 22-2175A and 22-2175B (previously numbered 22-10021). These rights are Snake River Basin Adjudication decreed rights, considered real property and appurtenant to the land described as the place of use. The place of use under both these rights is under multiple ownership by city, corporations and individuals according to Madison County records. The only portion of land I identified in the applicants name is the portion of Right 22-2175B not offered for lease in the SESW, Section 32, T06N, R40E.

I understand from the application that these irrigation rights are being replaced as development of the platted subdivisions occur by the municipal system of the City of Rexburg. Please correct me if I am wrong. I assume the rights were withheld from the initial land sale to developers, but don't have any documentation of this. **Please provide conveyance documentation** (warranty deed, quitclaim deed, court decree, contract of sale, etc.) to show that the rights were withheld from sale of land.

Because the Department cannot process the Applications to lease these water rights without the information requested, we will hold any action on your applications pending receipt of the necessary information. If we do not receive the necessary information within **14 days** these applications will be denied because they cannot be processed without the requested information.

If you have any questions or no longer have an interest in leasing the water rights, please contact me at (208) 287-4951.

Sincerely,

Pam Skaggs
Water Rights Supervisor

c: Jerry R Rigby, Rigby Andrus & Rigby Law PLLC

MEMORANDUM

To: Water Right No. 22-2175A
From: Pam Skaggs
Date: 1/27/2015
Re: Review of Application to Lease Water Rights to the State Water Supply Bank

PURPOSE/NARRATIVE: This application was received on December 23, 2014. The entire right is proposed leased to the bank for the 2015 irrigation season. Use of the 1960 irrigation right has been reduced to accommodate subdivision development. The place of use is within the service boundary of the City of Rexburg municipal water rights and within the Madison Ground Water District.

AUTHORITY TO FILE: The applicant Richard F. Smith is the currently authorized water right owner per Department records and the SRBA Partial Decree. The application was submitted by Mandy Davis, Assistant to attorney Jerry Rigby, along with the required fee.

Property within the place of use is owned by multiple owners according to 2013 Madison County tax records available through ArcMap taxlot layer. Information will be requested from the applicant to verify that ownership of the right has been retained separate from the land prior to lease approval.

WATER RIGHT VALIDITY: A partial decree was issued for this right in 2008 and irrigation appears to have occurred in years following. No forfeiture concerns at this time.

INJURY TO OTHER WATER RIGHTS: No injury is apparent. The right has slowly been separated from the land as development has proceeded.

ENLARGEMENT OF USE: No enlargement is evident through the lease alone. The right has slowly been separated from the land as development has proceeded and incorporated into the municipal system. Proper rental review should protect against enlargement.

LOCAL PUBLIC INTEREST: 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 leased right is not currently subject to any Water District. Eastern Region comments will be requested.

RECEIVED

DEC 23 2014

DEPARTMENT OF
WATER RESOURCES

Law Offices

RIGBY, ANDRUS & RIGBY LAW, PLLC

*Ray W. Rigby, Retired
G. Rich Andrus
Jerry R. Rigby
Michael S. Kam (1954-2001)
Hyrum D. Erickson
Tyler J. Salvesen*

*P.O. Box 250
25 North Second East
Rexburg, ID 83440*

*Telephone: (208) 356-3633
Fax: (208) 356-0768
jrigby@rex-law.com*

December 18, 2014

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

Re: Water Supply Bank

To Whom it May Concern:

I have enclosed herewith two Water Supply Applications to Sell or Lease a Water Right to the Water Supply Bank. I have also enclosed a check for the associated fees.

If you have any questions, please contact our office. Thanks.

Sincerely,



Mandy Davis
Assistant to Jerry R. Rigby

/md
Enclosures

sb/smithrichard.lt8

22-2175A & 22-14021/22276