



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

December 10, 2014

DANIEL L WILLIE
1017 S 1150 E
EDEN, ID 83325

RE: APPLICATION TO LEASE WATER RIGHTS 36-16113, 36-16114, 36-16116 and 36-16124 TO THE WATER SUPPLY BANK

Dear Mr. Willie:

On October 6, 2014, the Department of Water Resources (Department) received your application to lease water rights 36-16113, 36-16114, 36-16116 and 36-16124 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 it was appropriated."

On February 10, 2003 the Department approved transfer 69053. A condition of approval for this transfer included mitigation under rights 36-16113, 36-16114, 36-16116 and 36-16124. The condition included a schedule of use for these rights.

Years 1 through 2 the diversion and use of water under the rights are limited to 0.00 cfs, 0.0 afa and 0.0 acres (30.2 acres left unirrigated).

Years 3 through 6 the diversion and use of water under the rights are limited to 0.11 cfs, 3.0 afa and 9 acres (21.2 acres left unirrigated).

Years 7 through 12 the diversion and use of water under the rights are limited to 0.26 cfs, 86.4 afa and 21.6 acres (8.6 acres left unirrigated).

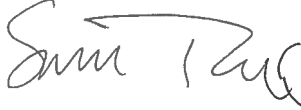
Based on the date of the transfer, years 3 through 6 include 2005 – 2008 and years 7 through 12 include 2009 - 2014. A review of aerial photography and Landsat imagery from years 2005 through 2014 show no clear evidence of irrigation on the acres proposed to be leased to the Bank. I did not find evidence that 9 acres were irrigated at the place use from 2005 to 2008. Further, I did not find evidence that 21.6 acres were irrigated from 2009 through 2014. The rights cannot be considered for lease to the Bank without evidence of beneficial use of water for irrigation during at least one (1) irrigation season.

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**.

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 you have any questions regarding this matter, please contact me at (208) 287-4881.

Sincerely,

A handwritten signature in black ink, appearing to read "Sandra Thiel". The signature is fluid and cursive, with a long horizontal stroke extending from the "S" across the top of the name.

Sandra Thiel
Sr. Water Right Agent

STATE OF IDAHO
WATER RESOURCE BOARD

RECEIVED

OCT 06 2014

DEPT. OF WATER RESOURCES
SOUTHERN REGIONWATER 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 Daniel L. WillieWater Right No. 36-16113

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. 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.

DENIED

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. |
| 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-Received By: DMDate Received: 10-6-2014Receipt # S034329W-9 received? Yes ☒ No ☐ (Route W-9 to Fiscal)Name on W-9: Danso, LLC

STATE OF IDAHO
WATER RESOURCE BOARD

RECEIVED

OCT 06 2014

DEPT. OF WATER RESOURCES
SOUTHERN REGIONAPPLICATION 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 Daniel L. Willie Email Address _____
Mailing Address 1017 S. 1150 E. Eden, ID 83325 Phone Number (208) 825-4147

☒ 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 36-16113 ☒ 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.

Existing well, piping & sprinklers. This right has been set-aside for mitigation since 2003.

- 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.

36-16113, 36-16114, 36-16116, 36-16124 limited to combined 0.37cfs, 30.2 ac., and 120.8 afa. Transfer #69053
limits total usage to 0.27 cfs, 89.6 afa and 22.4 acres from 2015 forward with remainder held for mitigation.

C. Will the present place of use continue to receive water from any other source?

Yes ☐ No ☐

If yes, describe. no

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. Transfer approval #69053 required non-use to provide mitigation for calculated transient impacts to ESPA model reaches.

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. Mitigation for transfer #69053.

4. SALE/LEASE AGREEMENT

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

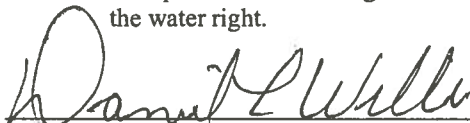
If lease, for a period from 10/01/2014 to 1/1/2019 (maximum lease period 5 years).
(Month / Day / Year) (Month / Day / Year)

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.
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

Daniel L. Willie
Printed Name

10-3-14
Date

Signature of Authorized Representative

Printed Name

Date

Mail to:

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

Thiel, Sandra

From: Yenter, Cindy
Sent: Monday, December 08, 2014 8:07 AM
To: Thiel, Sandra
Subject: RE: water supply bank rental

No, these acres are not part of a delivery call mitigation plan. The ground water districts are no longer including idled acres in their plans. The last idled acres for mitigation were approved in a 2006 plan. So even if those 9 acres which were eligible to be irrigated in 2005 were included in the 2005-2006 plans (I haven't looked but I doubt it), forfeiture might be stayed for another 2 years but that still doesn't get them there. You are right on target to deny the lease.

The only mitigation involved here is mitigation for the approved transfer 69053. Once the period of required non-use on each set of acres expired, they were again subject to forfeiture. Plus if you look at the period before the transfer you will see that the rights were decreed in 2001, transferred in 2003 and were not used in the interim, so there is some period of accrued forfeiture which must be added to the actual years of non-use after the transfer condition expired.

I am aware that continued protection of the acres via some "mitigation" status is what the applicant (thru his consultant) is trying to allege but it just doesn't fly.

Have you seen my email to Cherie from October? There is a final 0.8 acres which are to be released from conditional non-use in 2015. So, technically this 0.8 acre could go in the bank in 2015, but the rest are not eligible. You seem to be picking up on this because you reference only 21.6 of the 22.4 acres, but you might be more specific in the letter about the remaining 0.8. I'm not sure what you could offer in terms of modifying the lease application etc but I can't see them paying \$500 to put less than an acre in the bank.

Please feel free to include these comments in the file.

Cindy Yenter
Watermaster, Water District 130
Twin Falls, ID
cindy.yenter@idwr.idaho.gov
208-736-3033

From: Thiel, Sandra
Sent: Thursday, December 04, 2014 2:10 PM
To: Yenter, Cindy
Subject: water supply bank rental

Hello, Hope you are doing well. I only hear your voice during those meetings....

I have an application to lease 4 water rights belonging to Daniel Willie into the Bank:
36-16113, 36-16114, 36-16116 and 36-16124

I've attached the letter that I plan to send to them denying the lease. I can't find any evidence of irrigation. Apparently they are participating in a mitigation plan. Cherie asked me to what extent they are participating. If they want to put the portion into the bank that is part of the mitigation plan the lease would be based on our not accepting mitigation rights into the ban.

As always, thanks in advance for sharing your knowledge with me.

STATE OF IDAHO
WATER RESOURCE BOARD

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OCT 06 2014

WATER SUPPLY BANK LEASE OR SALE
APPLICATION CHECKLISTDEPT. OF WATER RESOURCES
SOUTHERN REGION

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Designated Applicant Daniel L. WillieWater Right No. 36-16113

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

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- ☒ 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.

DENIED

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.
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DEPT. OF WATER RESOURCES
SOUTHERN REGION

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

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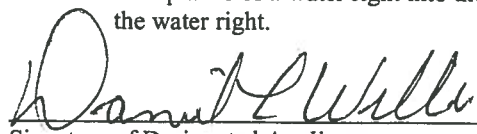
If lease, for a period from 10/01/2014 to 1/1/2019 (maximum lease period 5 years).
(Month / Day / Year) (Month / Day / Year)

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Signature of Designated Applicant

Daniel L. Willie

Printed Name

10-3-14

Date

Signature of Authorized Representative

Printed Name

Date

Mail to:

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

Magic Valley Ground Water District

P.O. Box 430
Paul, ID 83347
(208)532-4175

Invoice

Date	Invoice #
5/28/2014	1118

Bill To
Traveler's Oasis Truck Plaza Daniel Willie 1017 South 1150 East Eden, ID 83325

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OCT 06 2014

DEPT OF WATER RESOURCES
SOUTHERN REGION

P.O. No.	Terms	Project

Quantity	Description	Rate	Amount
0.07	2013-2014 MVGWD Membership Fee for Mitigation Only, WR#36-16116	840.00	58.80
0.07	2012-2013 MVGWD Membership Fee for Mitigation Only, WR#36-16116	840.00	58.80
0.07	2011-2012 MVGWD Membership Fee for Mitigation Only, WR#36-16116	840.00	58.80
0.07	2010-2011 MVGWD Membership Fee for Mitigation Only, WR#36-16116	840.00	58.80
0.29	2013-2014 MVGWD Membership Fee for Mitigation Only, WR#36-16114	840.00	243.60
0.29	2012-2013 MVGWD Membership Fee for Mitigation Only, WR#36-16114	840.00	243.60
0.29	2011-2012 MVGWD Membership Fee for Mitigation Only, WR#36-16114	840.00	243.60
0.29	2010-2011 MVGWD Membership Fee for Mitigation Only, WR#36-16114	840.00	243.60
5-25-14 6780 [Signature] [Signature]			
Total			\$1,209.60