



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

October 24, 2014

HENRY HAFLIGER
2175 E 3500 N
FILER ID 83355

RE: Request to rent water rights 47-16828 and 47-2379 from the Water Supply Bank

Mr. Hafliger,

The Department of Water Resources (Department) considered your request to rent water right 47-16828 and 47-2379 from the Water Supply Bank in 2014. This letter is to inform you that your rental requests are being denied.

In the time since your rental requests were received, the Department has received from you a separate request to transfer water right 47-17589 to a neighboring part of your property, for the same purpose of use requested for your rentals, irrigation (Transfer 79384). A significant number of protests from members of the public have been received relative to the proposed transfer of water right 47-17589. There are concerns about the availability of groundwater supplies in the area where you have proposed to rent groundwater. Due to allegations of injury in the matter of Transfer 49384, the Department finds it prudent to exercise caution and is denying your rental request. Pending the resolution of the protested transfer of water right 47-17589, future rentals at your proposed place of use can be considered.

You can contact me at 208-287-4918 if you have any questions in this matter,

Regards,

Remington Buyer
Water Supply Bank Coordinator

Cc: IDWR Front Desk
Greg Sullivan, Brockway Engineering
Allen Merrit, IDWR Southern Region

MEMORANDUM

To: 47-16828

From: Remington Buyer

Date: October 10, 2014

Re: Review of Application to Rent Water from the State Water Supply Bank

PURPOSE/NARRATIVE: A lease-rental companion application was received by the Bank proposing to lease 89 acres under water right 47-2306A into the Bank and to rent it out at a new place of use, in conjunction with 1.7 acres under water right 47-16828. In total, the rental proposed to divert groundwater and apply it to beneficial use upon 91.2 acres. The lease proposal for water right 47-2306A was denied and a rental fully from right 47-16828 was considered.

Following Mr. Hafliger's submission to the Bank of his rental request, the Department received from Mr. Hafliger a transfer application (Transfer 79384) proposing to transfer water right 47-17589 to a property owned by Mr. Hafliger, in close proximity to the rental place of use. Forty nine (49) protests have been registered in response to the proposed transfer. Many of the protests cite a concern that injury to a beneficial use of water may occur if the transfer authorizes further depletions to groundwater supplies.

Due to concerns that an approval of this rental request might authorize further depletions to groundwater and cause injury to current water users, this rental request is being denied.

AUTHORITY TO FILE: The renter, Hank Hafliger, owns the property at rental POU.

WATER RIGHT VALIDITY: Water right 47-16828 is available for rental from the Bank. An analysis of local groundwater flows in this area indicate that water right 47-16828 may be hydraulically connected to the aquifer from which Mr. Hafliger has proposed to divert water. The groundwater analysis was inconclusive however and information evaluated did not demonstrate a direct, immediate connection between this water right sought for rent and Mr. Hafliger's proposed rental place of use. As such, there are concerns about the validity of water right 47-16828 being rented at the place of use proposed by Mr. Hafliger.

INJURY TO OTHER WATER RIGHTS: There are numerous protests to the transfer of an irrigation water right to Mr. Hafliger's property (Transfer #79384). The proposed transfer is for fewer acres than the proposed rental. Though the protested transfer is a separate matter from the proposed rental, the Director of the Department of Water Resources may reject and refuse approval for...any proposed rental of water from the water supply bank where the proposed use is such that it will reduce the quantity of water available under existing water rights (42-1763). Moreover, in considering a rental request, the Director must evaluate whether there is evidence to suggest a rental might result in injury to other water rights (IDAPA 30.02.03 – 30.01). While certain injury has not been established, there is sufficient information to consider that injury might occur if this rental were authorized.

ENLARGEMENT OF USE: 47-16828 provides a flow of 3.5 AF/AC and a season of use lasting 214 days. The rental place of use has a headgate duty requirement of 4AF/AC and a growing season of 246 days. To avoid enlargement of use, the flow rate being offered on the rental will remain 3.5 AF/AC, conditioned to be allowed for 246 days subordinated to all other water rights having no subordinated early or late irrigation use.

LOCAL PUBLIC INTEREST: This rental is in the trust area, but the right being rented is not subordinate to trust water. Comments from Southern Region staff reveal there are four transfers proposed to move water to this property and three of the four are being protested. The Department finds that significant opposition to a transfer proposing to authorize increased pumping of groundwater at Mr. Hafliker's property, in a fashion similar to what has been proposed under the rental, is sufficient cause to exercise caution and deny this rental. If the transfer is ultimately approved, future rentals can be considered.

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

DEPARTMENT STAFF OR WATERMASTER COMMENTS: Citing a pending transfer and the numerous associated protests, IDWR Southern staff had concerns about the rental. In light of the concerns, the rental is being denied.

STATE OF IDAHO
WATER RESOURCE BOARD

APPLICATION TO RENT WATER FROM THE WATER SUPPLY BANK

RECEIVED
FEB 26 2014
DEPARTMENT OF
WATER RESOURCES

This application must be prepared in accordance with the minimum requirements listed to be acceptable for processing by the Department. Incomplete applications will be returned.

Name of Renter(s) Henry Hafliger Jr.

Mailing Address PO Box 105 Twin Falls Idaho 83303

Phone 208-326-5972

Email cedarridgedairy@live.com

A. DESCRIPTION OF WATER SOUGHT FOR RENT

1. <u>Maximum Flow Rate (cfs)</u>	<u>Maximum Volume (ac-ft)</u>	<u>Nature of Use</u>	<u>Period of Use</u>
<u>1.8</u>	<u>364.8</u>	_____	_____ to _____
_____	_____	_____	_____ to _____
_____	_____	_____	_____ to _____
Total: <u>1.8</u>	<u>364.8</u>		

2. Source of water Ground Water tributary to _____

3. Point(s) of Diversion:

TWP	RGE	SEC	GOVT LOT	1/4	1/4	1/4	County
11S	16E	6		SE	NW	NW	Twin Falls

4. Lands to be irrigated or place of use:

TWP	RGE	SEC	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
11S	16E	6		4.1			32.9	17.2	31.0	6.0									91.2

If the use is for irrigation, show total number of acres proposed through rental.

Total Acres 91.2

B. OWNERSHIP

1. Do you own the land at the proposed point of diversion?

Yes ☒ No ☐

If no, list owner, contact information, and attach a copy of the agreement or other written authority to use the proposed point of diversion. _____

2. Do you own the land at the proposed place of use?

Yes ☒ No ☐

If no, list owner, contact information, and attach a copy of the agreement or other written authority to use the proposed place of use. _____

C. MAP

Attach a map identifying the proposed point(s) of diversion, place(s) of use, and water diversion and distribution system details as described by this application in section A. Include legal description labels.

D. GENERAL INFORMATION

1. Please provide a description of the proposed diversion system.

Existing well, pump, mainlines and delivery system

2. Describe any other water rights diverted through the same point(s) of diversion or used for the same purpose(s) as described above.

47-2220

3. Will the proposed place of use receive water from any other source?

Yes ☐ No ☒

If yes, describe.

4. If the proposed use is not for irrigation, please provide a detailed description of the proposed use and how you determined the amount of water required. Attach additional sheets if needed.

N/A

5. Are there any other applications pending before the Department, such as an application for permit or transfer, for the same use(s) proposed by this rental?

Yes ☐ No ☒

If yes, describe.

6. Was this rental application submitted in response to a Notice of Violation or a pending Notice of Violation?

Yes ☐ No ☒

If yes, describe.

E. RENTAL TERM

Do you wish to rent water from the Board's bank for more than one (1) year?

Yes ☐ No ☒

If yes, please specify the number of years desired through proposed rental.

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.

If this application is approved, the applicant agrees to the following:

1. The use of water under this agreement shall be subject to the provisions of Section 42-1766, Idaho Code.
2. Renter shall comply with all applicable state and federal laws while using water under this agreement.
3. Renter shall hold the Board, the Director, and the state of Idaho harmless from all liability on account of negligent acts of the renter.
4. The Director may terminate diversion of water if the Director determines there is not a sufficient water supply for the priority of the right or portion thereof being rented.
5. Failure of the renter to comply with the conditions of this agreement is cause for the Director to rescind approval of the rental agreement.
6. Renter is not authorized to use water proposed by this application until the rental fees are paid in full and the renter receives an executed copy of the agreement signed by the Director.

Signature of Applicant

Printed Name and Title*

Date

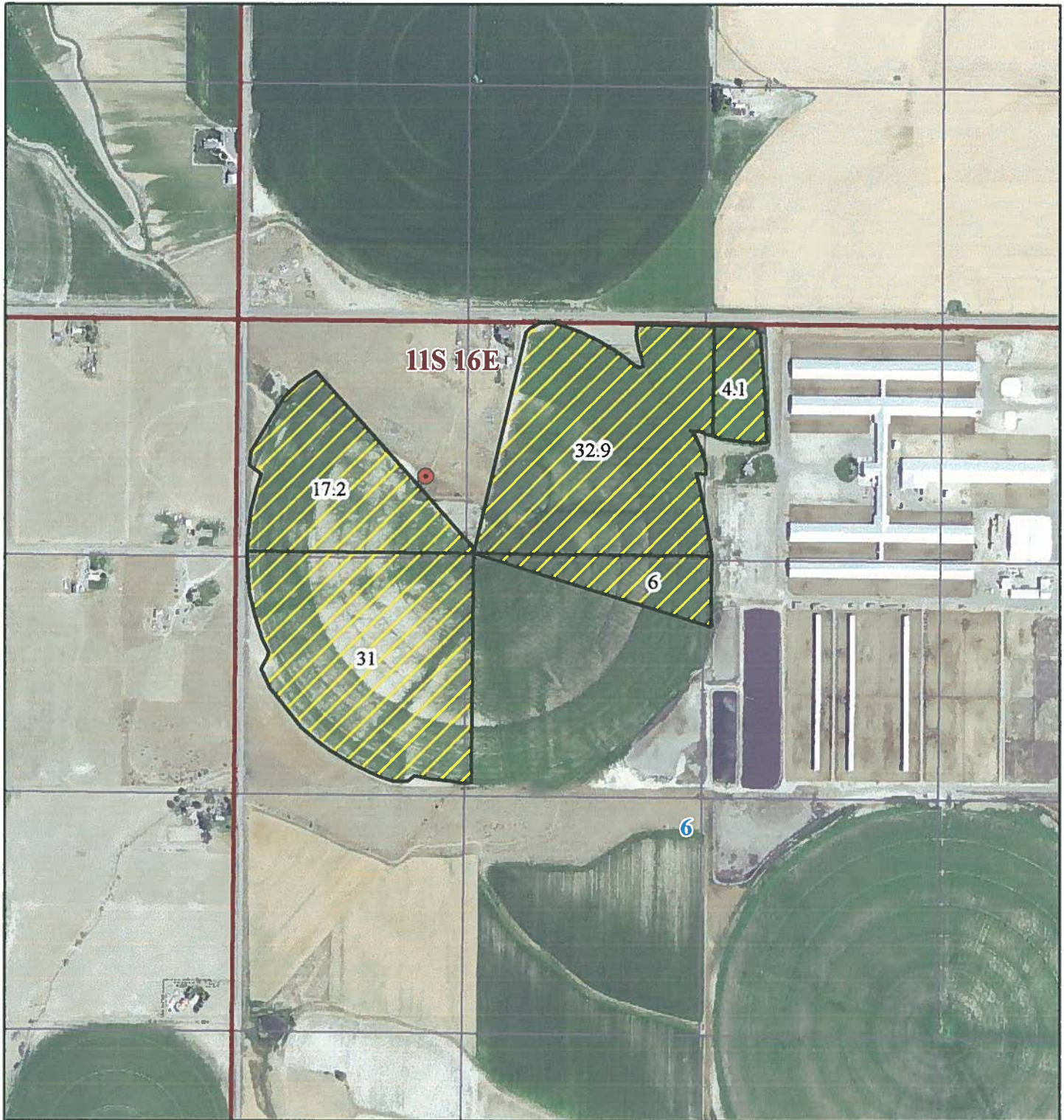
Signature of Applicant

Printed Name and Title*

Date

*Please provide title of signatory if signing on behalf of a company or organization or with power of attorney

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



0 260 520 1,040 Feet

HAFLINGER, HANK
WATER SUPPLY BANK RENTAL 2014 91.2 AC.
NAIP 2013 AERIAL

Legend

-  Point of Diversion
-  Sections
-  2014 Rental Areas
-  QQ Lines
-  twnshp





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C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

August 1, 2014

HENRY HAFLIGER
2175 E 3500 N
FILER ID 83355

Re: Application to lease a water right into the Water Supply Bank

Mr. Hafliger,

This letter is in regards to your applications to lease and rent water rights through the Water Supply Bank in 2014. This letter is to inform you that we are unable to accept water right 47-2306A for lease into the Water Supply Bank.

In order to accept a water right for lease into the Water Supply Bank, the use of water under a water right must be reduced or suspended. Use of water right 47-2306A authorizes irrigation of 89.5 acres within a 209 acre permissible place of use. An analysis of 2014 aerial imagery indicates the place of use is currently being irrigated and water right 47-2306A is being fully utilized. Because the water right is being utilized, it cannot be accepted into the Water Supply Bank.

Your rental application can be fully approved as proposed through the full utilization of water right 47-16828. This water right provides 3.5 AF/AC of flow. Please advise if this amount will satisfy your rental needs. If this volume per acre is satisfactory, a rental agreement will be produced.

Additionally, your rental application for water rights 47-7519A and 47-7431A cannot be accepted as proposed because both of these water rights are also unacceptable for lease into the Water Supply Bank. The Bank is currently in the process of putting together a rental agreement for you with alternative water rights.

Regards,

Remington Buyer
Water Supply Bank Coordinator

CC: - Greg Sullivan, Brockway Engineering
- IDWR Southern Region, Allen Merritt

Buyer, Remington

From: Buyer, Remington
Sent: Tuesday, August 12, 2014 12:24 PM
To: 'Greg Sullivan'
Cc: Merritt, Allen
Subject: RE: Hafliger Rental
Attachments: DOC.pdf

Greg,

A visual inspection of the property owned by Mr. Hafliger and Blue Sage Properties LLC confirms that approximately 1225 acres have been irrigated between the two properties, not including the proposed rental places of use. Based off information provided by Salmon River Canal Company, allotments of surface water shares for Blue Sage and Mr. Hafliger provide a combined total of 1265 AF of water. If surface water accounts for irrigation of the 1225 acres, groundwater must be rented to cover the additional irrigation occurring at the rental places of use.

If your clients decide to withdraw their rental applications, their use of water at the rental places of use will be referred to IDWR's Water Compliance Bureau for further review.

The attached letters (being mailed to Mr. Hafliger today) provide 30 days for submission information necessary to complete processing of their rental applications.

Regarding any questions related to the denial of your client's lease applications, the following may be of assistance:

Due to the supplemental nature of 47-2306A, once irrigation occurred within its place of use earlier this year, it was rendered ineligible for lease into the Water Supply Bank.

Because groundwater under 47-7431A and 47-7519A is historically put to beneficial use by comingling it with surface water from canal shares, the Bank is unable to determine the historic volume available to be leased into the Bank without pumping records or other documentation confirming its use, separate and distinct from canal shares. Additionally, because irrigation within the places of use authorized under these rights has not been suspended this year, identifying the amount of volume available to be leased into the Bank is further made difficult. Because the Bank has not been provided with information confirming the volume of water that is available to be leased under 47-7431A and 47-7519A, and because the Bank cannot confirm this volume hasn't been put to beneficial use within the authorized places of use, these rights have also been denied lease into the Bank.

Regards,

Remington Buyer

Idaho Department of Water Resources
322 East Front Street, Boise, ID, 83720
T: (208) 287-4918 | F: (208) 287-6700

From: Greg Sullivan [mailto:greg.sullivan@brockwayeng.com]
Sent: Wednesday, August 06, 2014 8:51 AM
To: Buyer, Remington
Subject: RE: Hafliger Rental

Remington,

See attached Warranty Deed.

I talked with the farm manager the other day and he confirmed to me that the ground water has been directed from its authorized POU locations to the proposed rental locations for the 2014 irrigation season. The delivery of the ground water to the proposed rental place of use was accomplished by controlling valves incorporated into the mainline delivery system.

The farm manager is having a hard time understanding the Water Supply Banks decision regarding the lease and rentals. Especially because the irrigation season is almost over. The whole point in renting back their own leased water rights was to make them legal with the State, save them thousands of dollars in rental fees and would be quicker and less complicated than creating a PPU with a transfer.

The question was asked to me, what would happen if they simply withdrew the rental applications? I told them that I was not sure the stance the Department would take considering the proposed rental PODs are the same as the authorized PODs for the ground water rights. I think it would be difficult for the Department to pursue a violation or any action against my client since the Department cannot ascertain what water (ground water vs surface water) has been used throughout the farm.

If IDWR is going to determine that the ground water rights have been used at their decreed POU then it will be physically impossible for farm manager to provide ground water to the proposed rental location also. It would be physically impossible because the wells can only provide the enough ground to satisfy the allowed acre limit plus a small acre increase. There is no way those wells can produce enough ground water to cover over 370 acres. There is enough ground water to be used at the proposed rental POU or at the current decreed POU but not both locations. If the Department denies the lease applications on the basis that the ground water is being used at the decreed POU then it impossible for the rental to be approvable. The ground water can only be used at one location or the other, but not both locations.

Salmon River Canal Company water rights 47-10, 47-13, 47-17 and 47-23A all have the beneficial use of "Irrigation Storage" and "Irrigation From Storage" which allows the end users of this water right to apply as much or as small of a volume of Canal water to each acre of farm land. These water rights have no volume limit per acre. This allows a share holder to legally apply 1.0-5.0+ acre feet per acre. The volume rate to be applied is determined by the farmer, the crop needs and the available water.

Greg Sullivan
Brockway Engineering
2016 N. Washington St. Suite 4
Twin Falls, Id 83301
208-736-8543

From: Buyer, Remington [<mailto:Remington.Buyer@idwr.idaho.gov>]
Sent: Monday, August 04, 2014 3:01 PM
To: 'Greg Sullivan'
Subject: Hafliger Rental

Greg,

The Water Supply Bank is unable accept the water rights Mr. Hafliger proposed to lease in and rent out. Reviews of Landsat imagery for the places of use for all three of the water rights confirms vegetation through irrigation. We are unable to confirm that the use of these rights has been suspended.

The POU for 47-2306A is fully irrigated. This is a supplemental water right. Because the POU is irrigated, the supplemental groundwater right cannot be accepted into the Bank.

47-7431A and 47-7519A are groundwater rights, not supplemental to, but commingled with surface water for irrigation use. Landsat imagery reveals that a significant amount of Blue Sage's property is being irrigated, including portions of the places of use proposed to be idled through the lease to the Bank. We are unable to confirm that the use of these groundwater rights has been suspended.

The Bank intends to move forward with rental agreements for Mr. Hafliger in the two locations he has proposed using alternative water rights. Regarding the rental in 11S 16E 6, we can utilize water right 47-16898. This right provides 0.01 CFS per acre and 3.5 AF per acre. Mr. Hafliger has requested 0.02 cfs and 4 AF per acre. Will 3.2AFA and 0.91 cfs be sufficient for his needs? Is there a minimum flow/volume he requires at this location?

For his rental proposal in 11S 16E 4, he also requested 0.02 cfs and 4 AF per acre. There is availability for him to rent 47-2379, however this provides 0.016 CFS and 4 AF per acre. Will this be sufficient for his needs?

Finally, his rental in 11S 16E 4 is on property owned by Blue Sage Properties. Mr. Hafliger indicated on his application form that he owns the land at the rental POU, but he is not listed on the Secretary of State's website as a representative of Blue Sage Properties. Please confirm his authority to act on behalf of Blue Sage, or to irrigate on their property.

Thanks,

Remington
287-4918

Buyer, Remington

From: Greg Sullivan [greg.sullivan@brockwayeng.com]
Sent: Tuesday, September 09, 2014 11:31 AM
To: Buyer, Remington
Cc: hankhafliger@hotmail.com; Cedar Ridge Dairy
Subject: RE: Hafliger Rental

Remington,

I have discussed the rental alternatives with Hank Hafliger regarding your attached letter. Due to the current timing in the 2014 irrigation season, Hank has agreed to move forward with your proposed rental of other ground water rights. The volume and diversion amounts that you have specified in your letter are adequate. Please prepare and mail out the rental contracts for Hank to sign.

Greg Sullivan
Brockway Engineering
2016 N. Washington St. Suite 4
Twin Falls, Id 83301
208-736-8543