



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

March 17, 2014

LANCE AND LISA FUNK
2960 CEDAR LN
AMERICAN FALLS ID 83211

RE: APPLICATION TO LEASE WATER RIGHT NO. 35-14202 TO THE WATER SUPPLY BANK-DENIAL

Dear Applicant:

On December 23, 2013, the Department of Water Resources (Department) received your application(s) to lease water right 35-14202 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 2002 when the right was partially decreed in the Snake River Basin Adjudication and 2013 shows no evidence of irrigation on the acres proposed to be leased to the Bank. The proposed acres are commonly called the pivot corners, or corners that would no longer be irrigated when a pivot is installed.

However it appears that you are making a case for resumption of use on the questionable pivot corners in your application. Please note that resumption of use in the Eastern Snake Plain Aquifer (ESPA) has been addressed by the Department in a *Preliminary Order Denying Transfer No. 78878*. In general, the doctrine of resumption of use disproves resumption of use as a viable defense to forfeiture in the ESPA.

Because of this evidence of more than five years of non-use and conclusions of law regarding resumption of use, the requirements of Water Supply Bank Rule 25 cannot be met and the attached lease application is **denied**.

If you have any questions regarding this matter, please contact me at (208) 287-4944.

Sincerely,

A handwritten signature in cursive script that reads "Cherie Palmer".

Cherie Palmer
Senior Water Resource Agent
WSB Process Point of Contact

DEC 23 2013

DEPARTMENT OF
WATER RESOURCESSTATE OF IDAHO
WATER RESOURCE BOARDWater Supply Bank No. _____
(For Department Use Only)APPLICATION TO SELL OR LEASE A WATER RIGHT
TO THE WATER SUPPLY BANKName of Seller/Lessor LANCE FUNK and LISA FUNK Phone (208)226-9976Mailing address 2960 CEDAR LN AMERICAN FALLS, ID 83211 Email _____**A. DESCRIPTION OF WATER RIGHT, OR PORTION THEREOF, OFFERED TO THE BANK**

If the entire right is for sale or lease, show "ALL" below and skip the remainder of part A. Attach a copy of the water right report.

<u>1. Water Right Number</u>	<u>Amount (cfs/ac-ft)</u>	<u>Nature of Use</u>	<u>Period of Use</u>
<u>35-14202</u>	<u>0.5/134.7</u>	<u>Irrigation</u>	<u>4/01</u> to <u>10/31</u>
_____	_____	_____	_____ to _____
_____	_____	_____	_____ to _____

Total Amount: 0.5/134.72. Source of water Ground Water tributary to _____

3. Point(s) of Diversion:

Twp	Rge	Sec	Lot	¼	¼	¼	County
06S	29E	11			NE	NW	Bingham
06S	29E	11			SE	SW	Bingham

4. Lands irrigated or place of use:

Twp	Rge	Sec	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
06S	29E	2											8.9	8.6					17.5
		11					7.8	8.4											16.2

If the right is for irrigation, show total number of acres offered to the bank. Total Acres 33.7**B. OWNERSHIP**

- Are you currently listed in IDWR's records as the owner of the water right being offered to the bank? Yes ☒ No ☐
If no, provide documentation of your authority to sign on behalf of the right holder OR attach a Notice of Change in Water Right Ownership form along with the required documentation and fee.
- Is the water right appurtenant to land subject to any liens, deeds of trust, mortgages, or contracts? Yes ☐ No ☐
If yes, provide a notarized statement from the holder of the lien, deed of trust, mortgage or contract agreeing to the proposed changes and list name of entity: _____

C. GENERAL INFORMATION

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

Existing wells, mainlines and irrigation systems

2. Describe any other water rights used for the same purpose or at the same place of use as described above.

35-14198, 35-14200, 35-14202, 35-14204, 35-14206 AND 35-14208

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

Yes ☐ No ☒

If yes, describe.

4. 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 right has not been lost through abandonment or forfeiture pursuant to Section 42-222(2), Idaho Code.

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

If yes, describe.

D. SALE/LEASE AGREEMENT

1. Is the water right, or portion thereof, described above offered to the Idaho Water Resource Board for sale ☐ or lease ☒.

If Lease, for a period from 1/1/2014 to 12/31/2018 (not to exceed 5 years).
(Month / Day / Year) (Month / Day / Year)

2. Show the minimum payment acceptable to the Seller/Lessor. The minimum payment may be shown as the "current rental rate" as established by the Idaho Water Resource Board. 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 right for sale or lease to the Idaho Water Resource Board.

The owner/lessor acknowledges the following:

1. Payment to the owner/lessor is contingent upon the sale or rental of the right from the bank.
2. While a right is in the bank, the owner/lessor of the right may not use the right even if the right is not rented from the bank.
3. A right accepted into the bank stays in the bank until the Board releases it or the lease term expires.
4. While a right is in the bank, forfeiture provisions are stayed.
5. Acceptance of a right into the bank does not, in itself, confirm the validity of the right or any elements of the water right.

Signature of Applicant

Lance Funk, Partner
Printed Name and Title*

12/18/13
Date

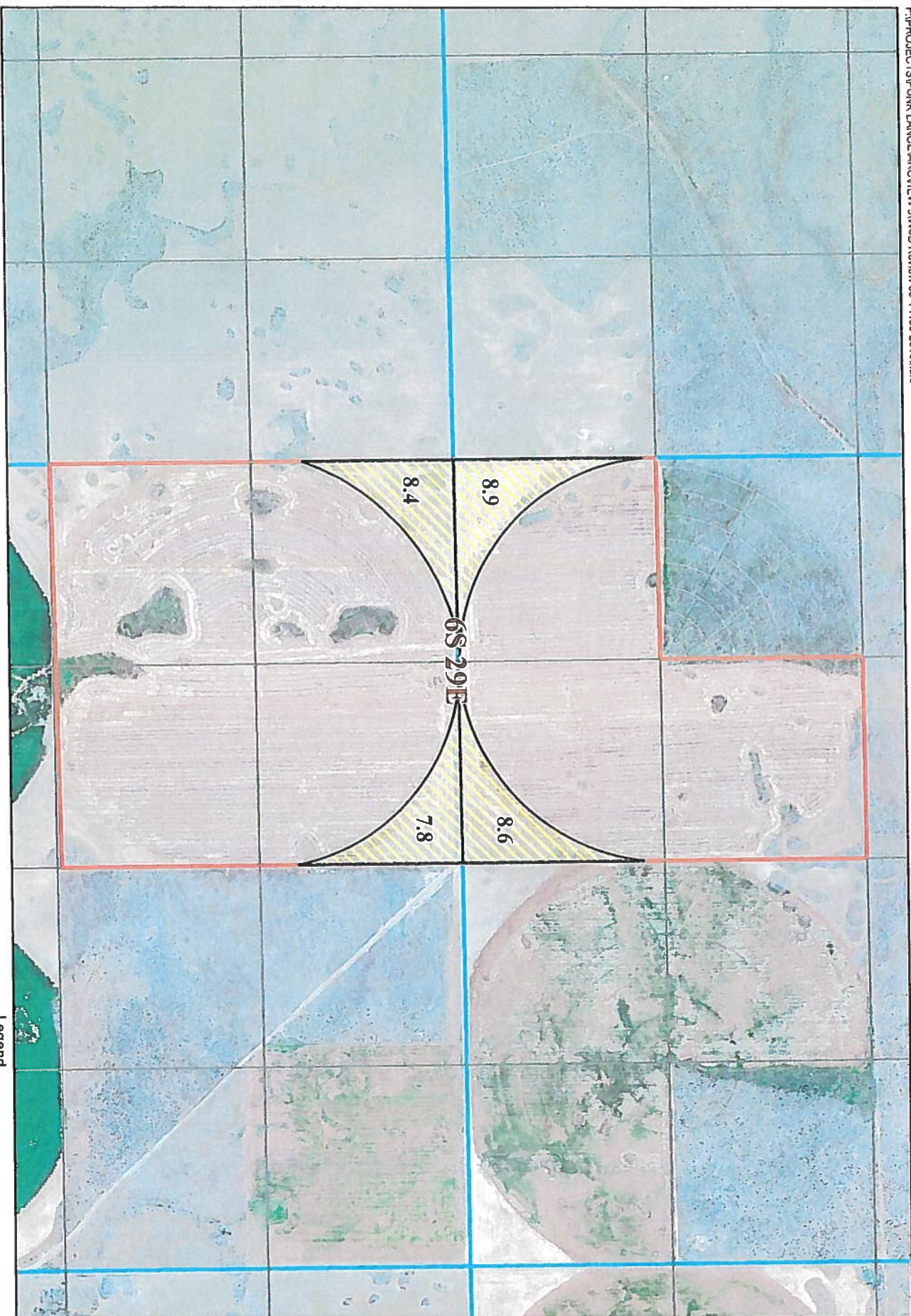
Signature of Applicant

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



0 405 810 1,620 Feet

FUNK, LANCE
WATER SUPPLY BANK 35-14198
BING AERIAL MAP

- Legend**
- WSB LEASE 35-14198
 - 35-14198_POU
 - township
 - Section Lines
 - CC Lines









BEFORE THE IDAHO DEPARTMENT OF WATER RESOURCES

IN THE MATTER OF WATER RIGHT
NO. 35-14202
FOR IRRIGATION

)
)
)
)

COMMENTS AND
EVIDENCE

COMES NOW, Lana Funk, and provides the following comments and
(Print Name)
evidence in this matter:

1. I am familiar with the property located in the SW of Section 2 and the NW of Section 11 of Township 06 South, Range 29 East, B.M., as shown in Exhibit A attached to this affidavit, hereafter known as the "Property."
2. The Property is covered by ground water rights 35-14198, 35-14200, 35-14202, 35-14204, 35-14206 and 35-14208. A total of 266.0 acres are allowed to be irrigated by a $\frac{3}{4}$ wiper pivot, one full pivot and four corner fields. The $\frac{3}{4}$ pivot rotates fully but the water is turned off in the NWSE of Section 2.
3. I owned and/or managed (circle one or both) the said Property from the year 1999 to the year 2013 and have knowledge of the irrigation system, and crops that were irrigated during that time.
4. The ground water was applied to the corner fields identified in Exhibit A in the Fall of 2012.
5. The crops grown and type of irrigation system used to deliver the water to the field on the Property have consisted of:

Crop: wheat

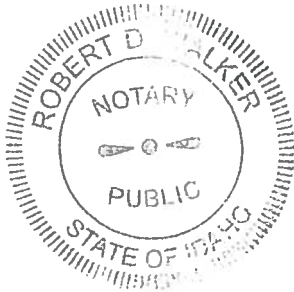
Irrigation System: handlines

DATED this 18th day of December, 20 13.

[Signature]
(sign name)

SUBSCRIBED and SWORN to before me

this 18TH day of DECEMBER, 2013.



Robert D. Walker

NOTARY PUBLIC

Residing at : IDAHO FALLS

My Commission Expires: 11-7-2017