



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

CARNEY FARMS
225 N 1250 W
PAUL ID 83347

RE: APPLICATION TO LEASE WATER RIGHT NOS. 36-2385 and 36-7025 TO THE
WATER SUPPLY BANK-DENIAL

Dear Applicant:

On July 5, 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 it was appropriated."

A review of aerial photography for the last 5 years 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,

for

Cherie Palmer
Senior Water Resource Agent
WSB Process Point of Contact

c: Allen Merritt- Southern Regional Manager
Cindy Yenter- Water District 130
Brockway Engineering PLLC



BROCKWAY
ENGINEERING
P.L.L.C.

Hydraulics

Hydrology

Water Resources

RECEIVED

JUL 05 2013

DEPARTMENT OF
WATER RESOURCES

July 3, 2013

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

Re: Carney Farms

Dear Mrs. Skaggs:

Carney Farms would like to lease 83.0 acres of water right 36-2284 and 36-7025 to the Idaho Water Supply Bank for a period of time from 1/01/2014 through 12/31/2018.

Horizon Organic Dairy currently farms the property and water rights. The pivots have historically been irrigated annually. The corners of the pivots have not been irrigated consistently. In the Spring of 2013, Horizon Organic Dairy installed temporary mainlines and hand line irrigated the all the corners and areas not covered by the full pivot and half wiper pivot under 36-2284 and 36-7025. The irrigation occurred during the beginning of the irrigation season to establish pasture for cattle and the irrigation piping has since been removed.

There are no aerial photographs or infrared imagery to confirm irrigation. Paul Carney of Carney Farms and Jamie Kulesa of Horizon Organic Dairy can provide additional information pertaining to when the irrigation occurred and when the pipes were retrieved from the fields. Two photographs were taken and are attached to this letter verifying that irrigation did occur.

If you have any questions regarding these lease applications, please call and we can discuss your concerns.

Sincerely,

Greg Sullivan, M.S.

Cc: Carney Farms, Horizon Organic Dairy
Enc: Lease Applications, Aerial Maps, Irrigation Photographs, Annual Report, WMIS Data,
Brockway Engineering Check # 11514 for \$500.00

CHARLES E.
BROCKWAY,
PH.D., P.E.

CHARLES G.
BROCKWAY,
PH.D., P.E.

2016 NORTH
WASHINGTON
STREET • SUITE 4

TWIN FALLS,
IDAHO 83301

208•736•8543

FAX: 736•8506

Palmer, Cherie

From: Greg Sullivan [greg.sullivan@brockwayeng.com]
Sent: Friday, November 01, 2013 10:41 AM
To: Palmer, Cherie
Subject: Carney Lease

Cherie,

It has come to my attention that the Lease application for Carney Farms that was submitted in July of 2013 incorrectly identified the wrong water right number on the application. The correct water right numbers are 36-2385 and 36-7025. These water rights are stacked and all proposed lease amounts for cfs/afa/acres as identified in the lease application are correct.

Please cross out the previous water right number and change it to 36-2385.

Thank you,

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

Hersley, Jean

From: Palmer, Cherie
Sent: Tuesday, March 11, 2014 9:22 AM
To: Hersley, Jean
Subject: Leases in review-Egbert and Carney

Hi Jean,

FYIs

I got two calls yesterday, Kirk Egbert and Greg Sullivan.

Kirk wanted to see what the status of his application is. I told him he can expect something in the next few weeks. He also told me to contact Keith Wilson, his consultant, if we have any questions.

Greg got your letter on the Carney lease and wanted to know what kind of information he could provide to show irrigation. I told him pump records would be his best bet. I told him since he had to get records from Idaho Power, we'd give him a little more time to provide his evidence. I wanted to discuss one at the meeting because Carney is claiming resumption and I don't know what we've accepted in the past.

Cherie

Palmer, Cherie

From: Palmer, Cherie
Sent: Friday, November 01, 2013 11:26 AM
To: Marston, Sascha
Subject: Receipt correction

Hi Sascha,

Can you please fix receipt #c097448 in the name of Brockway for \$500. The correction is in the comments. The fee should be going to water right # 36-7025 and 36-2385. Thank you.

Cherie



State of Idaho

DEPARTMENT OF WATER RESOURCES

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Phone: (208) 287-4800 • Fax: (208) 287-6700 • Web Site: www.idwr.idaho.gov

GARY SPACKMAN
Director

C.L. "BUTCH" OTTER
Governor

March 5, 2014

RESPONSE DEADLINE

March 13, 2014

CARNEY FARMS
225 N 1250 W
PAUL ID 83347

**RE: ADDITIONAL INFORMATION REQUEST FOR PROCESSING APPLICATION TO SELL OR
LEASE A WATER RIGHT 36-7025 and 36-2385 TOTHE WATER SUPPLY BANK**

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

Dear Applicant:

The Department of Water Resources ("Department") acknowledges receipt of your Application to Sell or Lease a Water Right to the Water Supply Bank ("Bank"). A preliminary review of your application has been completed and it has been determined that additional information is required to continue processing.

Please provide the following information within 7 days of the date of this letter or the application will be returned:

- Additional information regarding the hand line irrigated pivot corners in the spring of 2013. The Department's aerial photography is inconclusive.

Please provide the required information within seven (7) days. If sufficient information is not received within 7 days, your application will be returned to you unprocessed and you will have to re-file your application.

Sincerely,

Cherie Palmer
Senior Water Resource Agent
WSB Process Point of Contact

c: Brockway Engineering PLLC

Water Supply Bank No. _____
(For Department Use Only)

RECEIVED

JUL 05 2013

DEPARTMENT OF
WATER RESOURCESSTATE OF IDAHO
WATER RESOURCE BOARDAPPLICATION TO SELL OR LEASE A WATER RIGHT
TO THE WATER SUPPLY BANKName of Seller/Lessor Carney Farms Phone 208-438-2900Mailing address 225 N 1250 W Paul, Idaho 83347 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.

1. <u>Water Right Number</u>	<u>Amount (cfs/ac-ft)</u>	<u>Nature of Use</u>	<u>Period of Use</u>
~~36-2284~~ 2385 <i>Cp - see Greg Sullivan's 11/1/13 email</i>	0.58/177.5	Irrigation	3/15 to 11/15
			to
			to
Total Amount:	0.58/177.5		

2. Source of water _____ Ground Water _____ tributary to _____

3. Point(s) of Diversion:

Twp	Rge	Sec	Lot	¼	¼	¼	County
08S	21E	32		SW	SE	SW	Jerome

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	
08S	21E	32											3.6	6.8					10.4
09S	21E	5					3.4	6.8	1.4	0.5	29.5	31							72.6

If the right is for irrigation, show total number of acres offered to the bank. Total Acres 83.0

B. OWNERSHIP

1. 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.

2. 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, pumps, mainline pipes and pivots

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

36-7025 and 36-2385

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 ☒?

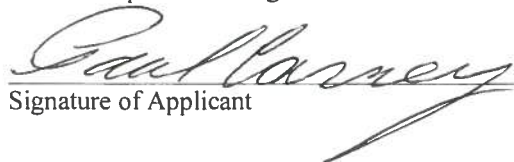
If Lease, for a period from 01/01/2014 to 12/31/2018 (not to exceed 5 years).
(Month / Day / Year) (Month / Day / Year)

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

Paul Carney
Printed Name and Title*

7/2/13
Date

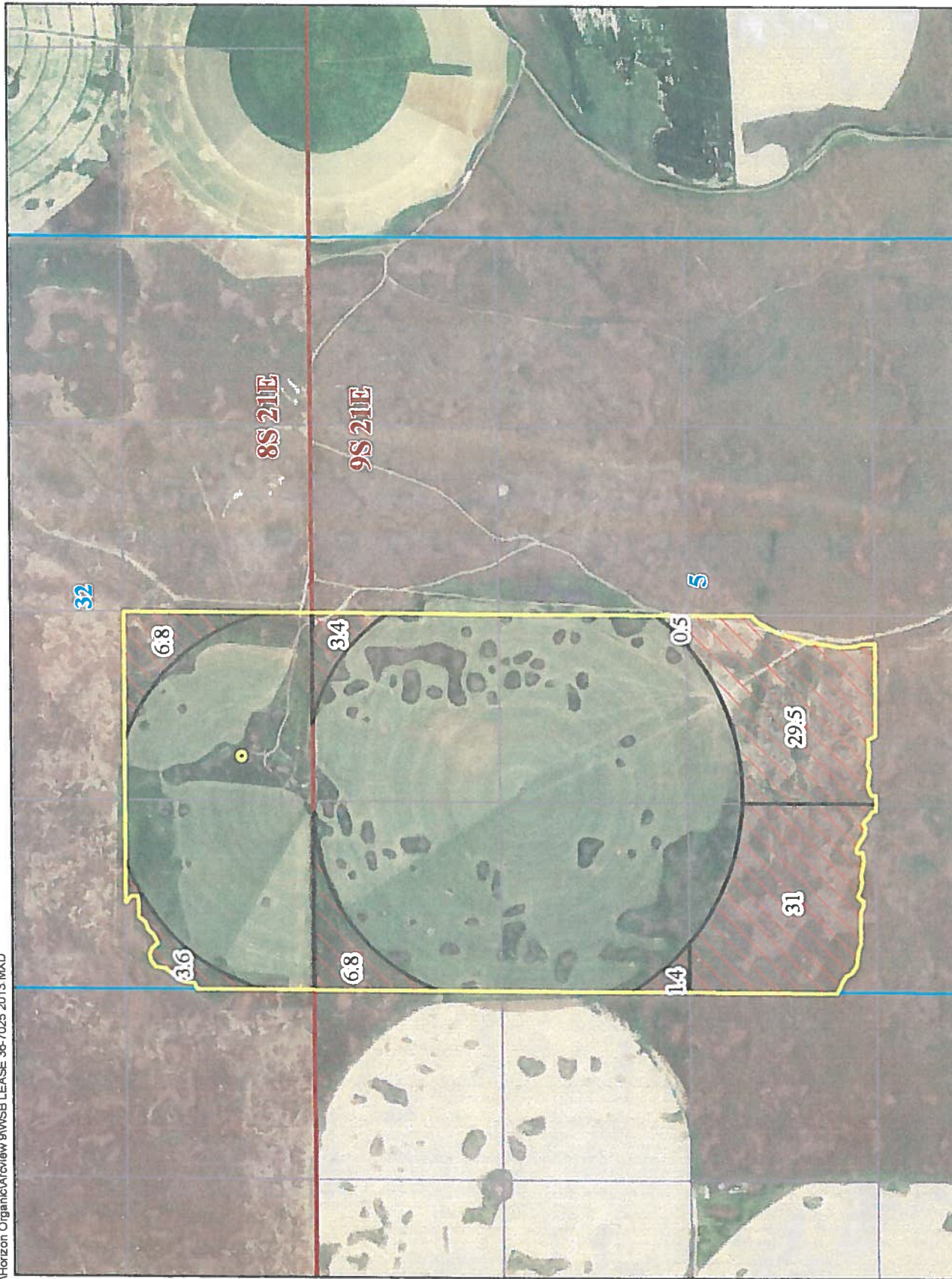
Signature of Applicant

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



0 460 920 1,840 Feet

**HORIZON ORGANIC
WATER SUPPLY BANK LEASED 36-7025
NAIP 2011 AERIAL**





CERTIFICATE OF ASSUMED BUSINESS NAME

Pursuant to Section 53-504, Idaho Code, the undersigned submits for filing a certificate of Assumed Business Name.

Please type or print legibly

NOTE: See instructions on reverse before filing.

FILED EFFECTIVE

2003 OCT -1 AM 9:01

SECRETARY OF STATE
STATE OF IDAHO

1. The assumed business name which the undersigned use(s) in the transaction of business is:

CARNEY FARMS

2. The true name(s) and business address(es) of the entity or individual(s) doing business under the assumed business name:

Name

Complete Address

Gary C. Carney

1250 W 225 N, Paul, Idaho 83347

Paul C. Carney

291 S 2800 E, Paul, Idaho 83347

3. The general type of business transacted under the assumed business name is:

- | | |
|--|--|
| ☐ Retail Trade | ☐ Transportation and Public Utilities |
| ☐ Wholesale Trade | ☐ Construction |
| ☐ Services | ☒ Agriculture |
| ☐ Manufacturing | ☐ Mining |
| ☐ Finance, Insurance, and Real Estate | |

Submit Certificate of
Assumed Business
Name and \$25.00 fee to:

Secretary of State
700 West Jefferson
Basement West
PO Box 83720
Boise ID 83720-0080
208 334-2301

4. The name and address to which future correspondence should be addressed:

Carney Farms

314 Crestview Road South
Paul, Idaho 83347

5. Name and address for this acknowledgment copy is (if other than # 4 above):

Phone number (optional):

208-438-5580

Signature: Gary C. Carney
(signature required)

Printed Name: Gary C. Carney

Capacity/Title: Partner

(see instruction # 8 on back of form)

Secretary of State use only

g:\completable\form\table\p55
Revised 11/1/2000

10/01/2003 03:00
CK: 1545 CT: 158010 BH: 704423
1 @ 25.00 = 25.00 ASSUM NAME # 2

D49380

Idaho Department of Water Resources



Quick Search:

[For assistance, email](#)[WMIS Info](#)

Search Method:

Legal Description

Legal Description

08S 21E 32 SW SE SW

You are logged in as Guest

Point Of Diversion PCC Flow Meter Time Clock Alternate Contacts Data Summary
Other Logout

Data Summary

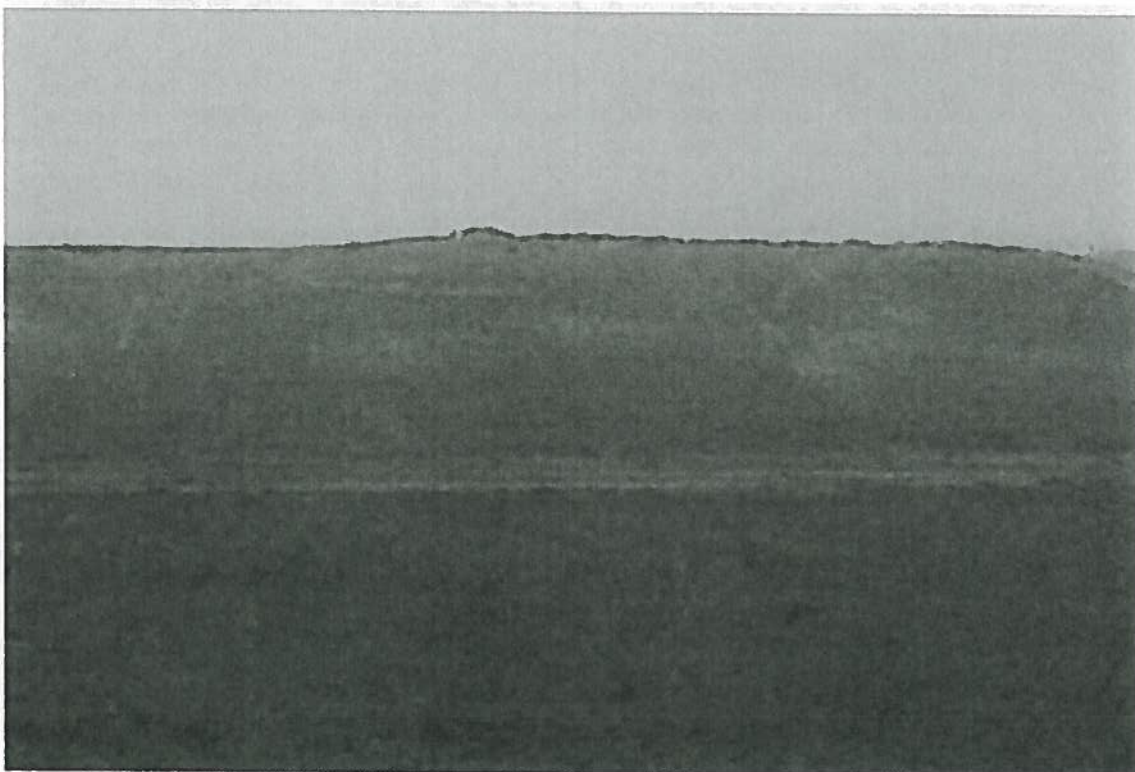
You are viewing 100674; A0004025

Report Year	Alternate	FM	PCC	Time Clock
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2011			515.00	
2010			555.00	
2009			456.00	
2008			516.77	
2007			416.85	
2006			322.39	
2005			449.50	
2004			664.30	
2003			508.80	
2002			509.80	
2001			0.00	
2000			588.12	
1999			436.30	
1998			273.60	
1996			274.60	
1995			284.70	
1992				

Carney Farms

Irrigation Spring 2013 from mobile mainlines and handlines

36-2284 & 36-7025



STATE OF IDAHO
WATER RESOURCE BOARD

APPLICATION TO SELL OR LEASE A WATER RIGHT
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			to _____
			to _____

Total Amount: 0.5/154.5

2. Source of water Ground Water tributary to _____

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(Month / Day / Year) (Month / Day / Year)

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Signature of Applicant

Paul Carney
Printed Name and Title*

7/2/13
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