



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

July 9, 2013

CITY OF ROCKLAND
PO BOX 113
ROCKLAND ID 83271

**RE: RETURNED APPLICATIONS TO LEASE & RENT WATER RIGHT NO. 41-10256
TO/FROM THE WATER SUPPLY BANK**

Dear Applicant:

The Department of Water Resources ("Department") is returning both the Application to Lease Right 41-10256 to the Water Supply Bank ("Bank") and the Application to Rent Water the same right from to the Bank. Based on review of the applications, the Department requested additional information that has not been submitted. The Department cannot complete processing of these applications without the required information.

The applications were received, May 8, 2013. On May 15, 2013 we agreed to hold these applications for 30 days to allow time to evaluate options for your project and provide information. We contacted Mr. Matthew of Keller Associates Inc. on June 28, 2013 and he asked for an additional week to respond. No information has been received.

If you determine that the Bank is your best option for this project, you may resubmit your applications when you are prepared to provide the necessary information to complete processing. A refund has been requested for the \$250.00 lease application fee identified under enclosed Receipt C097121.

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 forfeiture is a concern, you may also consider filing an Application for Extension of Time to Avoid Forfeiture of a Water Right.

If you have any questions, please contact me at (208) 287-4951.

Sincerely,

A handwritten signature in cursive script that reads 'Pamela S. Skaggs'.

Pamela S. Skaggs

Water Rights Supervisor

Enclosure: Lease & Rental Applications, Receipt C097121

c: Matthew B Hill – Keller Associates Inc

RECEIVED

Form 42-1761-i 12/12

MAY 08 2013

DEPARTMENT OF
WATER RESOURCES

STATE OF IDAHO
WATER RESOURCE BOARD

WSB No. _____
Receipt No. 0097121
Date/by 5-8-13 HP
(For Department Use Only)

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

Name of Seller/Lessor City of Rockland Phone 208-548-2489
Mailing address P.O. Box 113 Rockland, ID 83271 Email rocklandclerk@dcdi.net

A. DESCRIPTION OF WATER RIGHT, OR PORTION THEREOF, OFFERED TO THE BANK

If the entire right is for sale or lease, check here ☐. list the water right number, and skip to Part B.

1. <u>Water Right Number</u>	<u>Amount (cfs/ac-ft)</u>	<u>Nature of Use</u>	<u>Period of Use</u>
<u>41-10256</u>	<u>0.928</u>	<u>Irrigation</u>	<u>4/01</u> to <u>10/31</u>
_____	_____	_____	_____ to _____
_____	_____	_____	_____ to _____

Total Amount: _____

2. Source of water East Fork of Rock Creek tributary to Rock Creek

3. Point(s) of Diversion:

Twp	Rge	Sec	Lot	¼	¼	¼	County
10S	31E	05		NE	SW	SE	Power

4. Lands irrigated or place of use: *See Part D for additional information regarding 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	
10S	31E	6															15		15
		7	7.3	7.8				30											45.1

If the right is for irrigation, show total number of acres offered to the bank. Total Acres 60.1

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 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 to the proposed sale or lease and list name of entity:

Name	Service Address	Square feet	Total Square Feet	Acreage
1 Alvin Ralphs	Kootenai, Pine	300 X 139.25	41,775	0.96
2 Alvin Ralphs	Pine	180 X 102	18,360	0.42
3 Sybil Garza	210 Main	120 X 139.25	16,710	0.38
4 Cathy Colville	250 N. Main	120 X 139.25	16,710	0.38
5 Eric Radford	231 N. Main	240 X 139.25	33,420	0.77
6 Reynold Ralphs	205 N. Main	60 X 139.25	8,355	0.19
7 Karen Reaves	210 N. Spruce	60 X 139.25	8,355	0.19
8 Reva Wyatt	180 N. Spruce	120 X 140	16,800	0.39
9 Brad Ralphs	123 W. Kootenai	180 X 140	25,200	0.58
10 Shane Davis	195 N Spruce	60 X 140	8,400	0.19
11 Bonnie Smith	N Spruce	120 X 139.25	16,710	0.38
12 Matt Kelly	280 N. Spruce	120 X 139.25	16,710	0.38
13 Nancy Longstaff	211 N. Spruce	60 X 140	8,400	0.19
14 Scott Lish	230 W. Kootenia	60 X 140	8,400	0.19
15 Craig Miller	240 W. Kootenia	180 X 140	25,200	0.58
16 Bonnie Smith	260 W. Kootenia	60 X 140	8,400	0.19
17 Anderson	280 W. Kootenia	120 X 140	16,800	0.39
18 Anderson	125 E Center	120 X 140	16,800	0.39
19 Dave Fishcer	185 E. Center	90 X 140	12,600	0.29
20 Milton Poulson	420 E. Center	200 X 231	46,200	1.06
21 Milton Poulson	430 E. Center	165 X 231	38,115	0.88
22 City	135 S. Main	90 X 139.25	12,533	0.29
23 Post Office	155 S. Main	90 X 139.25	12,533	0.29
24 Fire	195 S. Main	62 X 139.25	8,649	0.20
25 David Weber	260 S. Pine	150 X 139.25	20,888	0.48
26 Susan McCorkendale	222 S. Pine	60 X 139.25	8,355	0.19
27 Perry Steidley		183 X 225	41,175	0.95
28 Perry Steidley		231 X 185	42,735	0.98
29 Perry Steidley		183 X 420	76,860	1.76
30 Harvey Duba		200 X 292	58,400	1.34
Total			690,547	15.85

RECEIVED

MAY 08 2013

Form 42-1761-2
09/09

DEPARTMENT OF
WATER RESOURCES

STATE OF IDAHO
WATER RESOURCE BOARD

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

APPLICATION TO RENT WATER FROM THE WATER SUPPLY BANK

Name of Renter City of Rockland Phone 208-548-2489
Mailing address P.O. Box 113 Rockland, ID 83271 Email rocklandclerk@dcdl.net

A. DESCRIPTION OF WATER SOUGHT FOR RENT

1. Maximum Flow Rate (cfs) 0.928 Maximum Volume (ac-ft) 34 Nature of Use Fill lagoon - irrigation Period of Use 4/01 to 10/31
to _____
to _____
Total: 0.928 34

2. Source of water East Fork of Rock Creek tributary to Rock Creek
3. Point(s) of Diversion:

Twp	Rge	Sec	Lot	¼	¼	¼	County
10S	30E	1		SW	NE	SE	Power

4. Lands to be 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	
10S	30E	1									25					40			65

If the use is for irrigation, show total number of acres proposed through rental. Total Acres 65

B. OWNERSHIP

1. Do you own the land at the proposed point of diversion? Yes ☐ No ☒
If no, list owner, contact information, and provide documentation of the 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 provide documentation of the authority to use the proposed place of use. Merrill Pemann - 548-2311, documentation is attached

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.

5/
April 15, 2013

I Merrill Permann give permission to the City of Rockland to install a temporary pump at the proposed point of diversion for the Rockland Wastewater Construction Project.


Name

22 Apr. 2013
Date

Skaggs, Pam

From: Skaggs, Pam
Sent: Tuesday, July 09, 2013 11:58 AM
To: Marston, Sascha
Subject: Application Fee Refund Request - City of Rockland WSB Lease Application
Attachments: Application Fee Refund Request.docx

Sascha,

Please process the attached refund request for Receipt C097121.

Pam

Pam Skaggs
WR Supervisor
287-4951

MEMORANDUM

TO: Pam Skaggs 

FROM: Sascha Marston

SUBJECT: Refund Request Receipt C097121

DATE: 07-09-2013

Please refund the **\$250.00** Water Bank Lease Application paid under **Receipt C097121**. The related application for Right 41-10256 and the City of Rockland is being returned with no action taken.

The application fee was paid by Gale Lim Construction LLC per the receipt on behalf of the City of Rockland (lease applicant). Idaho Secretary of State identifies the address for this business entity as:

GALE LIM CONSTRUCTION LLC
301 N 700 W
BLACKFOOT ID 83221.

Skaggs, Pam

From: Matthew Hill [mhill@Kellerassociates.com]
Sent: Friday, June 28, 2013 2:05 PM
To: Hemenway, Sandy
Cc: Skaggs, Pam
Subject: RE: City of Rockland water rights

We (and the City) are still trying to decide what is going to work best. We will get a response to you next week. Thanks for your help.

Matthew B Hill, P.E.
Project Engineer | Keller Associates, Inc.
P 208.238.2146 | C 208.313.4504

From: Hemenway, Sandy [<mailto:Sandy.Hemenway@idwr.idaho.gov>]
Sent: Friday, June 28, 2013 7:23 AM
To: Hemenway, Sandy; Matthew Hill
Cc: Skaggs, Pam
Subject: RE: City of Rockland water rights query (2).xls

Matthew,

I wanted to touch base with you on the City of Rockland. On May 15, 2013, you had requested a 30-day Hold on the rental and lease applications. If we do not receive the requested information, or an updated plan in order to proceed with processing the application, we will have no other recourse but to DENY and RETURN the applications.

I have copied Pam Skaggs on this email, since I will be out of the office until July 29, 2013, but I will still be checking my emails. If you wish to talk to Pam directly, her phone number is (208)287-4951.

Thanks,

Sandy Hemenway

Sr. Water Resource Agent

IDWR State Office/Boise

From: Hemenway, Sandy
Sent: Wednesday, May 29, 2013 4:47 PM
To: 'Matthew Hill'
Cc: Hemenway, Sandy
Subject: FW: City of Rockland water rights query (2).xls
Importance: High

Hemenway, Sandy

From: Hemenway, Sandy
Sent: Wednesday, May 29, 2013 4:47 PM
To: 'Matthew Hill'
Cc: Hemenway, Sandy
Subject: FW: City of Rockland water rights query (2).xls

Importance: High

Hi Matthew,

I thought I would just review the phone conversation that we had today:

- (1) After reviewing many options, this one seems to be the best one that we found, in order to meet the needs of the City of Rockland:
 - (a) Since all of the irrigation water rights have a combined limit of 46.4 acres within the PPU of 60.1 acres, they will have to be placed into the water supply bank as a group, and then leased out as a group to obtain the required rate and volume needed to fill the lagoon pond. The lease fee is a maximum of \$500, of which \$250 has already been paid, so there would only be an additional \$250 fee since these water rights are all involved in one system.
 - (b) A partial season could be used to obtain the rate you need, i.e. 3+ weeks in July where no irrigation would be used within the irrigation PPU, meaning that the entire city irrigation system would be shut off throughout the PPU. You would need to figure out the time period where there would be no irrigation going on within the city to obtain your required rate and volume. A condition would be added on the rental agreements, including the date where there would be no irrigation from the East Fork Rock Creek source within the city PPU, until the lagoon is filled. During this time period, the beneficial use would be changed from Irrigation Use to Municipal Use. So, it is important to figure the period of time to get the rate and volume you are wanting.
 - (c) Check with the water master to make sure how much the City of Rockland is being allotted from the East Fork Rock Creek, to ensure you estimate your fill time correctly. If it reduced due to drought, see if you can get a letter or statement in reference to the situation.
 - (d) In your letter please indicate your plan; your partial season of use; what you plan to do once the lagoon is filled; plans for pumping the lagoon out for the pump test this year; plans to hold over water throughout the winter, etc.
 - (e) Remember to keep in mind the priority dates for each of the water rights.
 - (f) Note in your letter that the lagoon is currently constructed, lined, and empty right now.
 - (g) In your letter, list any timelines you have with EPA, and penalties.

Thanks,
Sandy

From: Hemenway, Sandy
Sent: Wednesday, May 29, 2013 3:01 PM
To: 'Matthew Hill'
Cc: Hemenway, Sandy
Subject: City of Rockland water rights query (2).xls



City of Rockland
water rights ...

Basin	Sequence	Suf	Process	Basis	Status	Draft	RightID	Priority	Date	Div.	Rate	Source	List	Water Use	List	Current	Owner	Total	Acres	Acre	Lim	Water	District
41	2	B	Water Right	Decreed	Active	N	393671	5/1/1886			0.100	E. Fork Rock Ck.		IRRIGATION		CITY OF ROCKLANE		60.1		5.0	41	-	Rock Creek
41	25	C	Water Right	Decreed	Active	N	393718	3/12/1881			0.400	E. Fork Rock Ck.		IRRIGATION		CITY OF ROCKLANE		60.1		20.0	41	-	Rock Creek
41	32	F	Water Right	Decreed	Active	N	393719	6/1/1882			0.248	E. Fork Rock Ck.		IRRIGATION		CITY OF ROCKLANE		60.1		12.4	41	-	Rock Creek
41	33	B	Water Right	Decreed	Active	N	423524	6/1/1886			0.180	E. Fork Rock Ck.		IRRIGATION		CITY OF ROCKLANE		60.1		9.0	41	-	Rock Creek
41	4023		Water Right	Decreed	Active	N	650497	3/10/1958			0.670	GROUND WATER		MUNICIPAL		CITY OF ROCKLAND							
41	7082		Water Right	License	Active	N	650496	3/19/1990			0.560	GROUND WATER		MUNICIPAL		CITY OF ROCKLAND							
41	10256		Water Right	Decreed	Active	N	423526	4/1/1909			0.928	E. Fork Rock Ck.		IRRIGATION		CITY OF ROCKLANE		60.1		46.6	41	-	Rock Creek

 Irrigation water rights that have a combined limit of 46.4 acres irrigation in a single irrigation season, within the 60.1 acre Permissible Place of Use.
 Municipal groundwater water rights.

Hemenway, Sandy

From: Hemenway, Sandy
Sent: Wednesday, May 29, 2013 6:10 AM
To: Hemenway, Sandy; 'Matthew Hill'
Cc: ehansen@kellerassociates.com
Subject: RE: City of Rockland WSB lease/rental applications---request for additional information

Importance: High

Just touching base, since I am meeting with Shelley Keen and Jeff Peppersack today at 11:00am.

Thanks,
Sandy

From: Hemenway, Sandy
Sent: Thursday, May 23, 2013 4:54 PM
To: Hemenway, Sandy; 'Matthew Hill'
Subject: RE: City of Rockland WSB lease/rental applications---request for additional information
Importance: High

4 more questions:

- (1) What is the minimum diversion rate that is required to run the pivots, and how long would it take to pump the lagoon at that rate?
- (2) Does the City always receive their full allotment of water?
- (3) Is there going to be a crop grown at the Proposed Place of Use, and if so, what will the crop be?
- (4) If the full 13.7 acres that have no overlapping water rights were used, where would these additional acres be located, if they were needed?

Thanks,
Sandy

From: Hemenway, Sandy
Sent: Thursday, May 23, 2013 4:42 PM
To: Matthew Hill
Cc: Hemenway, Sandy
Subject: City of Rockland WSB lease/rental applications---request for additional information
Importance: High

Matthew,

I met with our question forum today, to talk about the e-mail from both you and Eddy Hansen, plus the map.

I am scheduled next week 5/29/2013 at 11:00 to meet with Shelley Keen/Water Rights Section Manager, and Jeff Peppersack/Water Allocation Bureau Chief. I have included a copy of what we will discuss, and then at the bottom are some questions that they asked me to find the answers for.

This is what we are going to be talking about.

Background:

- (1) **The City submitted a WSB rental and lease application for water right 41-10256.**
- (2) The City of Rockland is in the middle of a wastewater improvements project. EPA conducted an inspection and fined the City \$14.5 million if they do not comply with the regulations.
- (3) The City is required to have a mixture ratio of 50:1.
- (4) The lagoon was built in 1968, when there was a lot more water in the creek.
- (5) The lagoon holds 11 MG or roughly 34 af.
- (6) Several months out of the year, the City has no effluent.
- (7) The City decided to do a Land App Site for their wastewater, to do away with dealing with EPA as much as possible.
- (8) Doing a Land App Site, the City is dealing with DEQ/Pocatello, who had helped them with the process, and also funded the City.
- (9) The City's Municipal water rights, 41-4023 & 41-7082, are groundwater sources.
- (10) If groundwater were used from the Municipal system, no permit or transfer would be required to Land App, since the location for the proposed POU is within the service boundary of the City.
- (11) The City is choosing to not use the Municipal water rights (groundwater sources) for diluting effluent from the lagoon for Land App, due to the high expense of running the pumps (electrical bill). They instead prefer to use irrigation water rights.
- (12) Checking all water rights available in the WSB for basin 41, the only one available is 41-7029 22.3 cfs Fall Creek for Fish Propagation (non consumptive, therefore cannot be rented).
- (13) Overlapping irrigation water rights for the City are 41-2B, 41-25C, 41-32F, 41-33B, and 41-10256, all from the East Fork Rock Creek, with a combined limit for the first four of: 46.4 acres within the PPU of 60.1 acres. Taking $60.1 - 46.4 = 13.7$ acres available without overlap.
- (14) Administrative Area: 4/1 – 10/31 (214 days)
4.0 af headgate requirement
Consumptive Use 3.0
WD41-Rock Creek
- (15) This application for the City is a one-time application to empty the lagoon.
- (16) Can this irrigation right be changed to a municipal without reducing it to 3.0 consumptive use, like 95-2164 Coeur d'Alene transfer?

Here are the questions that they asked me to find out about:

- (1) Time line that they will be pumping to empty the lagoon
- (2) By what date do they have to meet EPA's requirements, before the fine will be enforced, and can they file for an extension.
- (3) Can they submit an aerial map designating the exact acres that will be dried up?
- (4) Can they submit a crop or irrigation history, for the acres?

Once we complete that meeting, I will contact you and review the results.

Thanks,

Sandy Hemenway
Sr. Water Resource Agent
IDWR/State Office
PO Box 83720 or 322 E. Front St.
Boise, ID 83720-0098
OFFICE: (208) 287-4920
CELL: (208) 761-0280
FAX: (208) 287-6700
Email: sandy.hemenway@idwr.idaho.gov

Hemenway, Sandy

From: Eddy Hansen [ehansen@Kellerassociates.com]
Sent: Thursday, May 23, 2013 8:46 AM
To: Hemenway, Sandy
Subject: Rockland, Idaho

Sandy- I just wanted to clarify that the map I drew up is just approximate location of the areas, I am not sure of what time of the year the Ariel was taken. It was pretty easy just looking at the grass that was green, but I am unsure of the amount of water that was being sent down the City's ditch, if we were cut back or not.

I looked at the schedule of the ditch water being used and the water is being used 24-7.

EPA came out and did an inspection and fined the City of Rockland \$14.5 million dollars if we did not comply with the regulations, crazy thing was that we discharge into the South Fork of the Rock Creek and it flows 300 feet before it mixes with the East Fork or the Rock Creek. The City is required to have a mixture ratio of 50-1. I explained to EPA that the permit and the Lagoons were built in 1968. Apparently in 1968 there was a lot more water in the creek or there have been more water rights moved to the South Fork of the Rock Creek from the East Fork of the Rock Creek. Several months out of the year the City has no effluent.

The City decided to do a Land App Site for our Wastewater and do away with dealing with EPA as much as possible. By doing a Land App site the City will be dealing with DEQ out of Pocatello, Idaho who has helped us through the process and also funded the City of Rockland.

Hopefully this sums as much up as possible, this is summed up briefly over a 6 year period.

Thanks

Call me if you have any questions. 208-244-2336

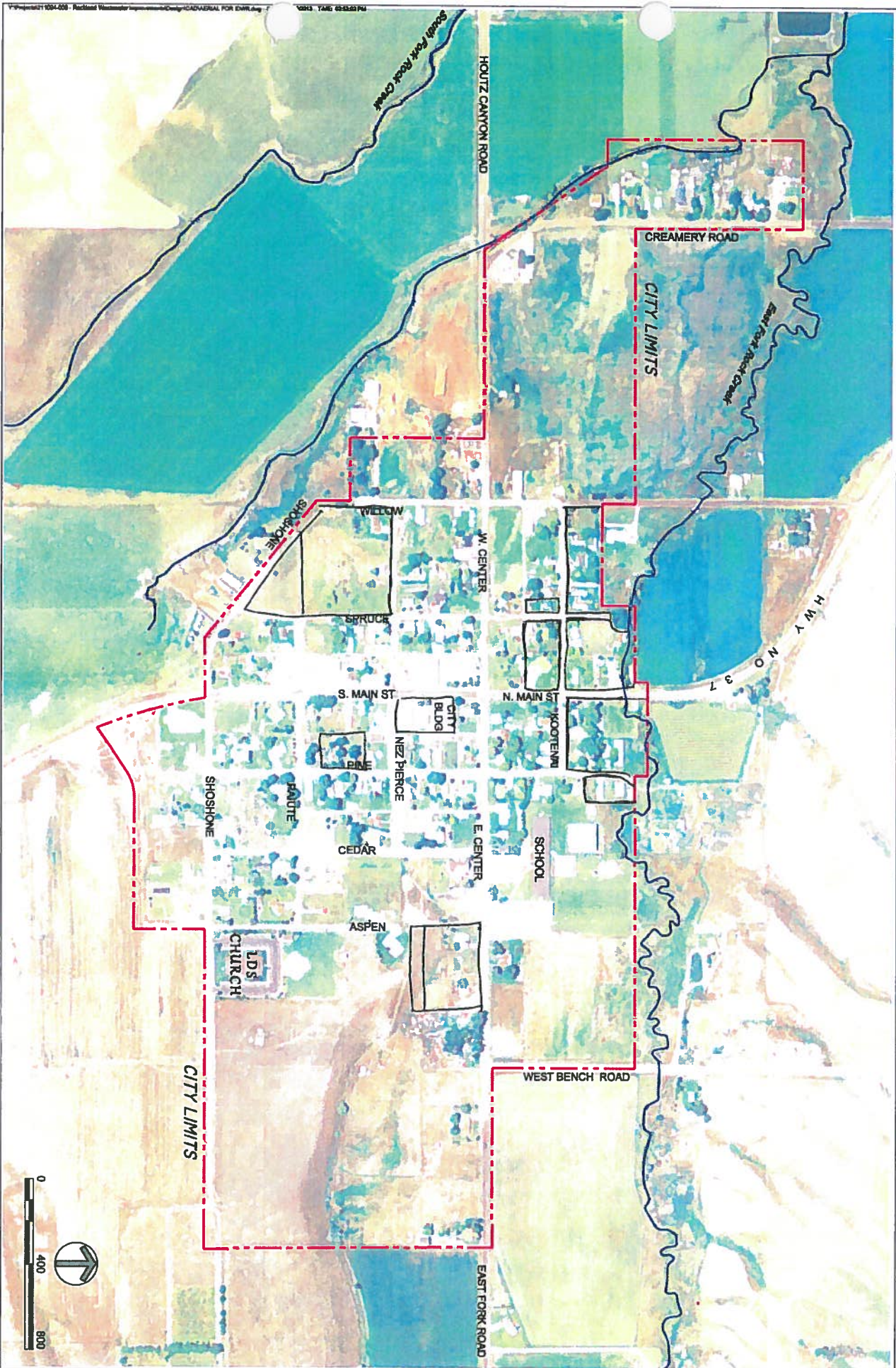
Eddy Hansen

Field Technician | Keller Associates Inc.

P 208.238.2146 | C 208.244.2336

305 N. 3rd Avenue, Suite A | Pocatello | Idaho 83201

ehansen@kellerassociates.com | www.kellerassociates.com



Hemenway, Sandy

From: Matthew Hill [mhill@Kellerassociates.com]
Sent: Wednesday, May 22, 2013 4:57 PM
To: Hemenway, Sandy
Cc: Eddy Hansen; Michael Jaglowski
Subject: RE: City of Rockland, Reuse presentation (flow chart); reuse reg's
Attachments: 20130522164602302.pdf

Sandy,

Attached is an aerial image from 2009. The date taken is not available. The attached map shows the areas indicated on the plat map as areas that will be dried up to use the surface water to fill the lagoon. This is a hand sketched map. If this is what is desired, we can put some additional work into producing a better map with an updated aerial image. The City limits are shown on the map. The south east area of the City (south of Paiute and east of Pine) are not able to be irrigated because of elevation.

As we discussed, the City is in the middle of a wastewater improvements project. EPA has threatened fines if the City doesn't complete these improvements. DEQ requires that the newly constructed winter storage lagoon be filled to capacity and seepage tested to ensure that it does not leak over the allowable limit. The lagoon holds 11 MG or roughly 34 ac-ft.

The City would prefer to use its surface water rights that flow by gravity near the site, rather than using its municipal groundwater rights and pumping that quantity of water into the system and then pumping it again into the winter storage lagoon.

Let us know if you need any additional clarifications from us.

Matthew B Hill, P.E.

Project Engineer | Keller Associates, Inc.

P 208.238.2146 | C 208.313.4504

From: Hemenway, Sandy [<mailto:Sandy.Hemenway@idwr.idaho.gov>]
Sent: Wednesday, May 15, 2013 1:56 PM
To: Matthew Hill
Cc: Hemenway, Sandy
Subject: City of Rockland, Reuse presentation (flow chart); reuse reg's

<<Water Rights for Water Reclamation and Reuse revision to presentation 5 23 2011.pptx>>

Matthew,

Just to review our phone conversation today:

(1) Attached is a copy of the Water Rights for Water Reclamation and Reuse (the flow chart shows how the City of Rockland being a municipality, having a groundwater source, if used to land apply effluent from the lagoon it would not need a permit or a transfer as long as it stayed within the water right elements (same POD, within the service area boundary, etc).

(2) A copy of the regulation is attached identifying that "if land applications to take place on lands not identified as a place of use for an existing irrigation water right, the municipal provider or sewer district shall provide the department of water resources with notice describing the location of the land application, or any change therein, prior to land application taking place. The notice shall be upon forms furnished by the department of water resources and shall provide all required information.

(3) Can you please send a map that identifies the actual acres that remain irrigated? The map that was submitted with the application was a black and white plat map. If you could send an aerial map, that would be great.

(4) I have attached the link, in the event the City decides to file a transfer. <<DOC000.pdf>>

We will hold these rental and lease applications for 30 days to allow enough time to meet with the City of Rockland, and determine their plans.

Thanks,

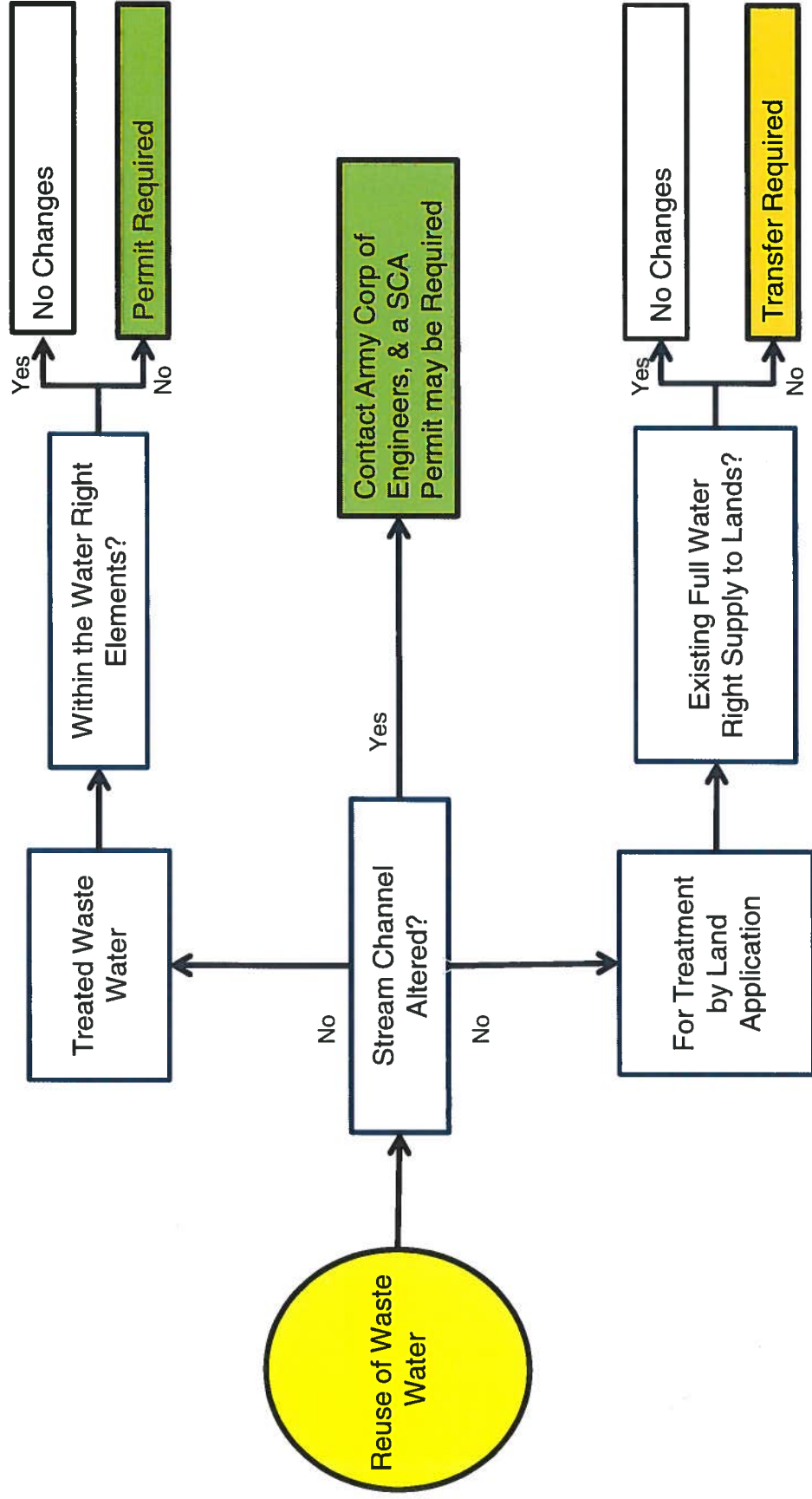
Sandy Hemenway

Sr. Water Resource Agent

IDWR/State Office, Boise

(208)287-4920

Sandy.hemenway@idwr.idaho.gov



Reuse of Waste Water



Idaho Statutes

TITLE 42

IRRIGATION AND DRAINAGE -- WATER RIGHTS AND RECLAMATION

CHAPTER 2

APPROPRIATION OF WATER -- PERMITS, CERTIFICATES, AND LICENSES -- SURVEY

42-201. WATER RIGHTS ACQUIRED UNDER CHAPTER -- ILLEGAL DIVERSION AND APPLICATION OF WATER -- USES FOR WHICH WATER RIGHT NOT REQUIRED -- EXCLUSIVE AUTHORITY OF DEPARTMENT. (1) All rights to divert and use the waters of this state for beneficial purposes shall hereafter be acquired and confirmed under the provisions of this chapter and not otherwise. And after the passage of this title all the waters of this state shall be controlled and administered in the manner herein provided. Such appropriation shall be perfected only by means of the application, permit and license procedure as provided in this title; provided, however, that in the event an appropriation has been commenced by diversion and application to beneficial use prior to the effective date of this act it may be perfected under such method of appropriation.

(2) No person shall use the public waters of the state of Idaho except in accordance with the laws of the state of Idaho. No person shall divert any water from a natural watercourse or apply water to land without having obtained a valid water right to do so, or apply it to purposes for which no valid water right exists.

(3) Notwithstanding the provisions of subsection (2) of this section, water may be diverted from a natural watercourse and used at any time, with or without a water right:

(a) To extinguish an existing fire on private or public lands, structures, or equipment, or to prevent an existing fire from spreading to private or public lands, structures, or equipment endangered by an existing fire;

(b) For forest practices as defined in section [38-1303](#)(1), Idaho Code, and forest dust abatement. Such forest practices and forest dust abatement use is limited to two-tenths (0.2) acre-feet per day from a single watercourse.

(4) For purposes of subsection (3)(b) of this section, no person shall divert water from a canal or other irrigation facility while the water is lawfully diverted, captured, conveyed, used or otherwise physically controlled by the appropriator.

(5) If water is to be diverted from a natural watercourse within a water district, or from a natural watercourse from which an irrigation delivery entity diverts water, a person diverting water pursuant to subsection (3)(b) of this section shall give notice to the watermaster of the intent to divert water for the purposes set forth in said subsection. In the event that the water to be diverted pursuant to subsection (3)(b) of this section is not within a water district, but an irrigation delivery entity diverts water from the same natural watercourse, the required notices shall be given to said irrigation delivery entity. For uses authorized in subsection (3)(a) of this section, notice shall not be required but may be provided when it is reasonable to do so.

(6) A water right holder, who determines that a use set forth in

subsection (3) of this section is causing a water right to which the holder is entitled to be deprived of water to which it may be otherwise entitled, may petition the director of the department of water resources to order cessation of or modification of the use to prevent injury to a water right. Upon such a petition, the director shall cause an investigation to be made and may hold hearings or gather information in some other manner. In the event that the director finds that an injury is occurring to a water right, he may require the use to cease or be modified to ensure that no injury to other water rights occurs. A water right holder feeling aggrieved by a decision or action of the director shall be entitled to contest the action of the director pursuant to section [42-1701A](#)(3), Idaho Code.

(7) This title delegates to the department of water resources exclusive authority over the appropriation of the public surface and ground waters of the state. No other agency, department, county, city, municipal corporation or other instrumentality or political subdivision of the state shall enact any rule or ordinance or take any other action to prohibit, restrict or regulate the appropriation of the public surface or ground waters of the state, and any such action shall be null and void.

(8) Notwithstanding the provisions of subsection (2) of this section, a municipality or municipal provider as defined in section [42-202B](#), Idaho Code, a sewer district as defined in section [42-3202](#), Idaho Code, or a regional public entity operating a publicly owned treatment works shall not be required to obtain a water right for the collection, treatment, storage or disposal of effluent from a publicly owned treatment works or other system for the collection of sewage or stormwater where such collection, treatment, storage or disposal, including land application, is employed in response to state or federal regulatory requirements. If land application is to take place on lands not identified as a place of use for an existing irrigation water right, the municipal provider or sewer district shall provide the department of water resources with notice describing the location of the land application, or any change therein, prior to land application taking place. The notice shall be upon forms furnished by the department of water resources and shall provide all required information.

History:

[(42-201) 1903, p. 223, sec. 41; am. R.C. & C.L., sec. 3252; C.S., sec. 5568; I.C.A., sec. 41-201; am. 1971, ch. 177, sec. 2, p. 843; am. 1986, ch. 313, sec. 2, p. 765; am. 2000, ch. 291, sec. 1, p. 1007; am. 2006, ch. 256, sec. 1, p. 793; am. 2008, ch. 320, sec. 1, p. 887; am. 2012, ch. 218, sec. 1, p. 596.]

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