



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street, P.O. Box 83720, Boise, ID 83720-0098

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

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

January 3, 2006

DARWIN MCKAY
6100 S EAGLE RD
MERIDIAN ID 83642

**RE: APPLICATION TO LEASE A WATER RIGHT TO THE WATER SUPPLY BANK.
WATER RIGHT NO. 63-31194**

Dear Mr. McKay:

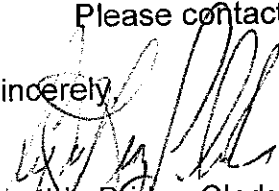
The department acknowledges receipt of the Applications to Sell or Lease a Water Right to the Water Supply Bank ("bank") received by the Idaho Department of Water Resources ("department") on November 19, 2004 and July 27, 2005. Both applications offer the above referenced water right for lease to the bank. As I discussed with your representative Jon Gould regarding the original application, and later Scott King with SPF Water Engineering, LLC, the department must have sufficient information to determine that the applicant has the authority to offer a water right for lease to the water supply bank. Processing your application to lease the right has been held pending resolution of questions surrounding the ownership of the right or until documentation of the authority to lease the right is provided.

It is my understanding that you are interested in protecting the water right from forfeiture due to non-use. As you are aware, forfeiture provisions are stayed while a right is leased to the Water Supply Bank. You may also file an Application for Extension of Time to Avoid Forfeiture of a Water Right for which the department may allow an additional five (5) year period of non-use without forfeiture upon showing reasonable cause. In either case, the applicant must demonstrate the authority to file an application concerning a specific water right.

To date the department has not received additional information clarifying the ownership dispute surrounding the right. Therefore, I am returning the applications filed to lease the water right to the bank. Please note this action is not a determination of ownership by the department. However, additional documentation is necessary to consider acceptance of the water right into the water supply bank.

Please contact me with additional questions regarding this matter.

Sincerely,


Cynthia Bridge Clark
Water Allocation Bureau

Encl: 2

c: John Westra – IDWR, Western Region
Jon Gould – Ringert Clark Chartered Lawyers
Scott King – SPF Water Engineering, LLC



SPF Water Engineering, LLC
water resource consultants

FAX COVER SHEET

Date: August 17, 2005
To: Cynthia Bridge-Clark
Fax Number: 287-6700
From: Scott King
Subject: *Darwin McKay application to lease water to the bank*

Includes cover sheet + 1 pages

Cynthia,

Included with this fax is a revised cover letter for Darwin McKay's application to lease water to the bank. Please discard my previous cover letter, and use this one in place.

Thank you,
Scott

600 East River Park Lane, Suite 105 Boise, Idaho 83706
Telephone: (208) 383-4140 Fax: (208) 383-4156



SPF Water Engineering, LLC
water resource consultants

August 16, 2005

Idaho Department of Water Resources
The Idaho Water Center
322 E Front St
Boise, ID 83720-0098

Attn: Cynthia Bridge-Clark

Subject: Application to lease a water right to the water supply bank

Dear Ms. Bridge-Clark,

Enclosed please find an application submitted on behalf of L. Darwin McKay seeking to lease his water right, 63-31194, to the Idaho Water Supply Bank.

Mr. McKay personally developed this right on lands that he leased from TCM Joint Venture. Although the land has since been sold to another party, Mr. McKay remains owner of the water right and seeks to lease the right.

Mr. McKay last used the right in 1999, which was the last year that McKay rented the land for turf production. In the meantime, disputes regarding ownership have prevented Mr. McKay from transferring the right for use on other property. It is my understanding that these disputes have been resolved, and now Mr. McKay seeks to lease the right to the water supply bank for protection against forfeiture.

Please let me know if you have any questions regarding this application.

Sincerely,

Scott N. King, P.E.
Senior Project Engineer

File: 388.0010

Water Supply Bank No. _____

Water Right No. _____

**STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES**

RECEIVED

DEPARTMENT OF
WATER RESOURCES

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

Name of Seller/Lessor L. Darwin McKay Phone (208) 888-3760

Post office address 6100 S Eagle Rd. Meridian, ID 83642

1. DESCRIPTION OF WATER RIGHT:

Right evidenced by:

- a. Decree No. _____ Decreed to _____
in case of _____ vs _____
dated _____ in _____ county of _____
(Name of court)
- b. License No. 63-31194 issued by the Idaho Department of Water Resources.
- c. Permit No. _____ issued by the Idaho Department of Water Resources.

2. DESCRIPTION OF PORTION OF RIGHT FOR SALE OR LEASE: (If the entire right is for sale or lease, show "all" on line a. below and skip the remainder of part 2.)

- a. Amount of water under right: ALL cubic feet per second &/or ALL acre-feet per annum
- b. Point of diversion: NE $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 21 Township 3N Range 1E,
B.M. in ADA County.
Additional points None

Water Supply Bank No. _____

Water Right No. _____

**STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES**

RECEIVED

JUL 27 2005

DEPARTMENT OF
WATER RESOURCES

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

Name of Seller/Lessor L. Darwin McKay Phone (208) 886-3760

Post office address 6100 S Eagle Rd. Meridian, ID 83642

1. DESCRIPTION OF WATER RIGHT:

Right evidenced by:

- a. Decree No. _____ Decreed to _____
in case of _____ vs _____
dated _____ in _____ City of _____
(Name of court)
- b. License No. 63-31194 issued by the Idaho Department of Water Resources.
- c. Permit No. _____ issued by the Idaho Department of Water Resources.

2. DESCRIPTION OF PORTION OF RIGHT FOR SALE OR LEASE: (If the entire right is for sale or lease, show "all" on line a. below and skip the remainder of part 2.)

- a. Amount of water under right: ALL cubic feet per second &/or ALL acre-feet per annum
- b. Point of diversion: NE $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 21 Township 3N Range 1E,
B.M. in ADA County.
Additional points None

c. Place of use:

TWP	RGE	SEC	N E				N W				S W				S E				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
3N	1E	21					20.5			28									48.5

If the right is for irrigation, show the number of acres for the part of the right to be put into the bank.

Total number of acres 48.5

3. ADDITIONAL INFORMATION ABOUT RIGHT, OR PORTION THEREOF, FOR SALE OR LEASE

- a. Explain how the seller/lessor acquired the right, or portion thereof, and attach a copy of the deed to the land to which it is appurtenant or other evidence of ownership of the right. If the right is not recorded in the name of the seller/lessor, attach a copy of a change of ownership form as required by Section 42-248 or 42-1409(6), Idaho Code, together with required documentation.

The applicant, Darwin McKay, developed this right on land he leased from TCM Joint Venture. The applicant remains current owner of the right and seeks to lease the right to the water supply bank.

- b. Describe the frequency of water use under the right, or portion thereof, during the past five (5) years of use. Attach watermaster records, pumping power bills, or other evidence to demonstrate that the right has not been lost through abandonment or forfeiture. (This information is not required if a partial decree has been issued on the right within the last 5 years).

The right was last used in 1999 when the applicant last leased the ground.

- c. If the right is from a surface water source, describe the period of the year that water is typically available to satisfy the right.

The right is from ground water.

- d. Describe any other water rights with the same purpose and place of use as the right, or portion thereof, offered for lease. Will the present place of use continue to receive water from any source? If so, describe.

No other rights are offered for lease. The present place of use has been developed into a commercial business park and is no longer irrigated except for a few acres of landscaping.

- e. If the water right is a permit, describe the work accomplished toward developing the right.

Right is licensed.

- f. If the right to the use of the water or the use of the diversion works or irrigation system is represented by shares of stock in a company or corporation, or if such works or system is owned or managed by an irrigation district, a written consent of the sale or lease must be attached.

4. REMARKS:

5. SALE/LEASE AGREEMENT

1. The water right, or portion thereof, described above is offered to the Idaho Water Resource Board:

_____ For sale;

X For lease for a period from 7/1/2005 to indefinite
(Day, month, year) (Day, month, year)

(The lease period may be shown as "indefinite", if the total duration of lease is unknown); or

_____ As a gift to the state of Idaho.

2. Show the minimum payment acceptable to the Seller/Lessor. Include the method of determining the minimum payment. The minimum payment may be shown as 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 of the right may not use the right even if the right is not rented.
3. A right accepted into the bank stays in the bank until the Board releases it or until the lease term expires.
4. While a water 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.

07/22/05
Date

Danimum McKay
Signature

FOR DEPARTMENT USE ONLY

Received by _____ Date _____ Preliminary check by _____

Watermaster recommendation requested on _____ Received _____

Recommended for _____ approval _____ denial by _____

Form 42-1761
01/03

Water Supply Bank No. _____

Water Right No. _____

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCESAPPLICATION TO SELL OR LEASE A WATER RIGHT
TO THE WATER SUPPLY BANKRECEIVED
NOV 19 2004
DEPARTMENT OF
WATER RESOURCESName of Seller/Lessor L. Darwin McKay Phone (208) 888-3760Post office address 100 S. Eagle Road, Meridian, Idaho 83641

1. DESCRIPTION OF WATER RIGHT:

Right evidenced by:

a. Decree No. _____ Decreed to _____ (Name)

in case of _____ vs. _____

dated _____ In _____ county of _____ (Name of court)

b. License No. 63-119 issued by the Idaho Department of Water
Resources.c. Permit No. _____ issued by the Idaho Department of Water
Resources.2. DESCRIPTION OF PORTION OF RIGHT FOR SALE OR LEASE: (if the entire right for sale or
lease, show on line a, below a skip the remainder of part 2.)a. Amount of water under right 0.62 cubic feet per second &/or
218.2 acre-feet per annum.b. Point of diversion: NE $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 21 Township 3N Range
1E, B.M. in Ada County.Additional points T3N, R1E, Section 21 NENW

c. 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	
3N	1E	21					20.5			28									48.5

If the right is for irrigation, show the number of acres for the part of the right to be put into the bank.

Total number of acres 48.5

3. ADDITIONAL INFORMATION ABOUT RIGHT, OR PORTION THEREOF, FOR SALE OR LEASE

- a. Explain how the seller/lessor acquired the right, or portion thereof, and attach a copy of the deed to the land to which it is appurtenant or other evidence of ownership of the right. If the right is not recorded in the name of the seller/lessor, attach a copy of a change of ownership form as required by Section 42-248 or 42-1409(8), Idaho Code, together with required documentation.

I filed the Application for Permit on July 22, 1988 and the Application for Amendment of a Permit on November 22, 1989. IDWR issued a water permit. The water right was licensed in my name on August 23, 1995. Please see IDWR records for additional information on water right 63-31194.

- b. Describe the frequency of water use under the right, or portion thereof, during the past five (5) years of use. Attach watermaster records, pumping power bills, or other evidence to demonstrate that the right has not been lost through abandonment or forfeiture. (This information is not required if a partial decree has been issued on the right within the last 5 years).

The current land owner, Sundance Investments Limited Partnership ("Sundance"), has put water right 63-31194 to beneficial use after purchasing the land in 2003, all be it, with out my permission. Richard Jankowski, representative for Sundance, confirmed use of this water in accordance with the conditions of the water right in a telephone conversation with my representative Jon Gould on October 25, 2004. The beneficial use of the water is also confirmed in a letter from Richard Jankowski as Sundance's representative, dated October 28, 2004, sent to Mr. Jeff Peppersack (IDWR). Please see IDWR records for additional information on water right 63-31194.

- c. If the right is from a surface water source, describe the period of the year that water is typically available to satisfy the right.

N/A

- d. Describe any other water rights with the same purpose and place of use as the right, or portion thereof, offered for lease. Will the present place of use continue to receive water from any source? If so, describe.

N/A

- e. If the water right is a permit, describe the work accomplished toward developing the right.

N/A

- f. If the right to the use of the water or the use of the diversion works or irrigation system is represented by shares of stock in a company or corporation, or if such works or system is owned or managed by an irrigation district, a written consent of the sale or lease must be attached.

4. REMARKS:

N/A

5. SALE/LEASE AGREEMENT

1. The water right, or portion thereof, described above is offered to the Idaho Water Resource Board:

_____ For sale;

X For lease for a period from Indefinite to _____

(The lease period may be shown as "indefinite", if the total duration of lease is unknown); or

_____ As a gift to the state of Idaho.

2. Show the minimum payment acceptable to the Seller/Lessor. Include the method of determining the minimum payment. The minimum payment may be shown as 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 of the right may not use the right even if the right is not rented.
3. A right accepted into the bank stays in the bank until the Board releases it or until the lease term expires.
4. While a water 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.

11/15/04
Date

L. Dammie McKay
Signature

FOR DEPARTMENT USE ONLY

Received by _____ Date _____ Preliminary check by _____

Watermaster recommendation requested on _____ Received _____

Recommended for _____ approval _____ denial _____ by _____