STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

WATER SUPPLY BANK RENTAL AGREEMENT No. 842

RECEIVED
APR 26 2024
DEPT. OF WATER RESOURCES

This is to certify that:

ROBERT L MITCHELL
10620 BERKSHIRE
LOS ALTOS, CA 94022

filed an application to rent water from the Water Supply Bank ("Bank"). The Idaho Water Resource Board ("Board"), being authorized to operate a Bank and to contract by and through the Director of the Idaho Department of Water Resources ("Director, Department") for rental of water from the Bank, agrees to rent water as follows:

Summary of Water Rights or Portions Rented from the Bank

Water Right No.	Priority Date	Source	Diversion Rate (CFS)	Diversion Volume (AF)	Acres (AC)	Rate Per Acre (CFS/AC)	Volume Per Acre (AF/AC)
37-22763	6/3/1884	EAST FORK WOOD RIVER	0.04	3.5	1.0	0.038	3.5
Rental Totals			**0.04**	**3.5**	**1.0**	**0.038**	**3.5**

Term of Rental: This rental agreement shall take effect when all parties have signed it and shall continue in effect until October 31, 2024. Use of rental water shall be authorized as of either the date this rental agreement takes effect or the first day of the rental season of use, in 2024, whichever occurs last.

Annual Rental Fee:

2024 -2025: $80.50

The full fee for the rental of the above-described right(s) is $80.50 for the years 2024-2025. The rental fee includes an administrative fee of $8.05 for years 2024-2025.

An annual payment shall be received by the Department on or before December 31 each year preceding the use of the rented water rights. The agreement will be void if payment is not received by the due date in a given year. Rental fees are non-refundable. To voluntarily terminate the agreement early, notify the Department in writing prior to the rental fee due date.

Total Water Use Authorized Under Rental Agreement

Beneficial Use	Diversion Rate (CFS)	Diversion Volume (AF)	Acres (AC)	Rate/Acre (CFS/AC)	Volume/Acre (AF/AC)
RECREATION STORAGE	0.04	1.8	1.0	0.038	1.8
Total	0.04	1.8	1.0	0.038	1.8

**** The authorized water usage reflects a reduction from the water right elements rented, to avoid enlargement under the nature of use change.***

Detailed water right conditions are attached.

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

WATER SUPPLY BANK RENTAL AGREEMENT No. 842

The undersigned renter agrees to use the water rented under this agreement in accordance with the Water Supply Bank rules and in compliance with the limitations and conditions of use described in this agreement:

Robert L Mitchell — 4/25/24
Signature of Renter — Date

Robert L. Mitchell — Lessor
Printed Name — Title

*Title required if signing on behalf of a company or organization or with power of attorney

Having determined that this agreement satisfied the provisions of Idaho Code § 42-1763 and IDAPA 37.02.03.030 (Water Supply Bank Rule 30), for the rental and use of water under the terms and condition herein provided, and none other, I hereby execute this Rental Agreement on behalf of the Idaho Water Resource Board.

By _____ Date 5/1/24
BRIAN PATTON, Acting Administrator
Idaho Water Resource Board

Rental approved by IDWR _____ Date 5/1/24

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

WATER SUPPLY BANK RENTAL AGREEMENT No. 842

WATER USE DETAILS

LOCATION OF POINT(S) OF DIVERSION

BIG WOOD RIVER, EAST FORK — SENE — Sec. 3, Twp 03N, Rge 18E, — BLAINE County

BENEFICIAL USE	DIVERSION RATE	VOLUME
DIVERSION TO STORAGE	0.04 CFS	
RECREATION STORAGE		1.8 AF

SEASON OF USE

Water Right No.	Beneficial Use	From	To
37-22763	Diversion to Storage	04/15	10/31
37-22763	Recreational Storage	01/01	12/31

RENTERS PLACE OF USE: RECREATION STORAGE

Twp	Rng	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
03N	18E	3									X					X			X

Total Acres: 0.0

RENTAL AGREEMENT CONDITIONS OF ACCEPTANCE

1. The use of water under this agreement shall be subject to the provisions of Idaho Code § 42-1766.
2. Rental of the specified right from the bank does not, in itself, confirm the validity of the right or any elements of the water right, or improve the status of the right including the notion of resumption of use. It does not preclude the opportunity for review of the validity of this water right in any other department application process.
3. Use of water under this agreement does not constitute a dedication of the water to renter's place of use, and upon expiration of this agreement, the points of diversion and place of use of the water shall revert to those authorized under the water right and/or again be available to rent from the bank.
4. Use of water under this agreement shall not prejudice any action of the Department in its consideration of an application for transfer or permit filed by the applicant for this same use.
5. Renter agrees to comply with all applicable state and federal laws while using water under this agreement.
6. Renter agrees to hold the Board, the Director and the state of Idaho harmless from all liability on account of negligent acts of the renter while using water.
7. Renter acknowledges and agrees that the Director may terminate authorization for the use of a water right based on a water right's priority date.
8. Failure of the renter to comply with the conditions of this agreement is cause for the Director to rescind approval of the rental agreement.
9. The renter shall maintain a measuring device and lockable controlling works of a type approved by the Department in a manner that will provide the watermaster suitable control of the diversion(s).

WATER SUPPLY BANK RENTAL AGREEMENT No. 842

10. Use of water under this right will be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No.37.
11. The renter shall install and maintain an impermeable liner in the ponds to eliminate seepage losses.
12. The two ponds established by the storage of water under this rental shall not exceed a total capacity of 1.8 acre-feet or a total surface area of 0.7 acres.
13. This rental of water right 37-22760 authorizes the diversion of an annual total of 1.8 acre-feet to be used for the initial filling of the ponds. Diversion for the replacement of losses caused by seepage and evaporation from the ponds is not authorized by this rental agreement.
14. Place of use is located within Lots 33 & 34, Block 2, Hyndman Peak Subdivision.

Idaho Water Resource Board

Attachment to Water Supply Bank Rental Agreement No. 842

Effective until December 31, 2025

This map depicts the **rental place of use** pursuant to the rental agreement and is attached to the agreement solely for illustrative purposes.



Legend

- Water Supply Bank Rental POD
- Water Supply Bank Rental POU
- Township/Range
- Sections
- QQ

N

0 500 1,000 Feet

Form 42-1761-2 10/15

STATE OF IDAHO
WATER RESOURCE BOARD

APPLICATION TO RENT WATER FROM THE BOARD'S WATER SUPPLY BANK

RECEIVED
DEC 03 2021
DEPARTMENT OF WATER RESOURCES

Applicant Name: Robert Mitchell

Is this application being submitted with a lease application as a lease/rental package? Yes ☐ No ☑
If yes, specify companion water rights in Section 4

This application must be completed according to the minimum requirement checklist below. This checklist is part of the rental application and must be included with the rental application. **Applications that do not meet the minimum requirements will not be placed in the processing queue and may be returned until all minimum requirements have been met.**

Rental applications should be submitted well in advance of the desired start date for the use of rental water. Rental applications may be processed as early as November 1 of the year prior to the intended use of rental water. Any rental application received on or before November 1 for use in the next year will be assigned a received date of November 1. Rental applications submitted more than one year in advance of the proposed start date for the use of rental water will not be accepted and will be returned to applicants. Rental applications may be returned to applicants if the desired start date for the use of rental water cannot be accommodated by the Water Supply Bank. Rental requests will not be accepted once the rental season of use period has concluded.

One rental application per beneficial use of water. For multiple beneficial uses of water, separate rental requests should be submitted for each unique beneficial use of water. One rental application can be submitted if you propose to rent water from multiple sources.

For additional instructions on completing a rental application, visit the Bank's website at http://idwr.idaho.gov/water_supply_bank.

MINIMUM REQUIREMENT CHECKLIST

Check All Items as Either Attached (Yes) or Not Applicable (N/A)

		Yes	
		☑	Completed *Application to Rent Water from the Board's Water Supply Bank*
		☑	Confirmation that this form has been printed single sided, per requirement of the Water Supply Bank
Attachment	**N/A**	**Yes**	
2		☑	A map showing the proposed point(s) of diversion, place(s) of use, and water diversion and distribution systems proposed to be used with your rental request
3A	☐	☑	Detailed information on a proposed use of rental water
3F	☑	☐	Authorization from the owner/operator of the rental point(s) of diversion
3H	☑	☐	Water modeling to account for the impacts of the rental request
3J	☑	☐	Documents justifying a rate of flow greater than 0.02 cfs/acre
3K	☐	☑	Authorization from the owner/operator of the property at the proposed rental place(s) of use
4B	☐	☑	Explanation of how the rental water will sufficiently accomplish your rental purposes
4C	☐	☑	Explanation of consumptive use amounts for water rights experiencing a change in nature of use

Department Use Only – Proposed Water Right(s)

2212

STATE OF IDAHO
WATER RESOURCE BOARD

Application to Rent Water (Continued)

1. CONTACT INFORMATION

A. Applicant Robert Mitchell

Mailing Address 10620 Bershire Dr. Los Altos CA 94024
Street City State Zip Code

Email Address _____ Phone Number 415-968-3333

B. Is this application being completed by an authorized representative on behalf of the applicant? Yes ☑ No ☐
If yes, representatives (includes company employees if the applicant is a corporation, as well as legal counsel or consultants) should provide their information below if they desire to be included on correspondence with the rental applicant.

Representative Zach Latham Professional Title Hydrologist

Organization Brockway Engineering PLLC Relationship to Applicant Consultant

Mailing Address 2016 Washington St. North Suite #4 Twin Falls, ID 83333

Email Address zach.latham@brockwayeng.com Phone Number 208-736-8543

2. MAP

Create a map of the proposed point(s) of diversion, place(s) of use and water diversion, delivery and distribution systems. Make sure the rental place of use is outlined and annotated with legal land descriptions (Township, Range, Section and Quarter-Quarters) or with GPS coordinates. For irrigation purposes, mark the number of acres you desire to irrigate. Attach the map to this application and label it **Attachment 2.**

3. DESCRIPTION OF PROPOSED USE FOR RENTAL WATER

A. Describe why you desire to rent water and provide a detailed description of your proposed use. If the proposed use is not for irrigation, describe in detail how you determined the amount of rental water required. If the space below is insufficient, attach additional sheets as required and label them **Attachment 3A**:

Applicant seeks to rent 1.7 acre-feet of surface water for first fill of ponds on property. Accompanying application for permit 37-23302 has been filed with IDWR.

B. Enter the desired and/or minimum rates of flow, volume, or irrigable acres requested for your rental purposes:

Desired Rate (Cubic Feet/Second)	Desired Volume (Acre-Foot)	Minimum Rate* (Cubic Feet/Second)	Minimum Volume* (Acre-Foot)	Desired Acres (if applicable)
CFS	1.7 AF	CFS	1.7 AF	AC

* ***Sometimes water rights provide an exceptionally low rate per acre and/or low volume per acre. This section is meant to establish an acceptable range of water sufficient for your proposed water use. Please see question 4B and complete if necessary.***

C. This section must be completed in full. Enter the proposed start date and latest possible start date for using rental water as well as the number of years you would like to rent water. The latest possible start is the latest possible date by which you would be willing to pay for a rental and be able to benefit from utilizing rental water.

Desired Start Date (month/day/year)	Latest Possible Start Date (month/day/year)	*Mark Desired Rental Duration (Calendar Years)					**Applicant's preference if rental application cannot be processed prior to the latest possible start?	
4/15/22	8/1/22	☐ 1	☐ 2	☐ 3	☐ 4	☑ 5	☑ Process application as soon as possible	☐ Return application to applicant

* ***The number of years permissible for a rental is subject to the lease contract duration for the water right(s) being rented.***

** ***Per Idaho Code 42-201, it is unlawful to divert or use water without a valid water right. Water Supply Bank rental applicants are not authorized to utilize rental water prior to the execution of an approved rental agreement. Rental requests may be returned to applicants if no water is available from the Bank to fulfill a rental request.***

STATE OF IDAHO
WATER RESOURCE BOARD

Application to Rent Water (Continued)

D. Describe your water distribution system and how rental water will be delivered from the point(s) of diversion (POD) to the proposed place of use (POU):
Water will be diverted at existing POD associated with applicant's existing irrigation water rights 37-539H and 37-539L to ponds on applicant's property.

E. Describe the physical type (pump, headgate, etc.) and location of the POD from which rental water is proposed to be diverted:

POD Description	Water Source	Other Water Rights Diverted from this POD
Existing Diversion	East Fork Big Wood River	37-539H, 37-539L

If the POD(s) above are located where water is turned into a canal, lateral or ditch, or if they are located on your property but are serviced by water that is delivered via a canal, lateral or ditch, your rental request must include documented authorization from all relevant canal companies, irrigation districts and/or water delivery entities, confirming that they consent to your diversion of water from their system.

F. Has documented consent from all relevant water delivery entities been obtained? Yes ☐ N/A ☑
If yes, include documented consent as **Attachment 3F**.

G. Do any POD(s) identified in Question 3E divert from a water source that may require water modeling? Yes ☐ No ☑
Refer to the Water Modeling Requirements Information Sheet to determine if a rental POD may require water modeling.

H. Has water modeling been provided with your rental request? Yes ☐ N/A ☑
If yes, label modeling Attachment 3 H.
Rental applications that require modeling will be returned if modeling is not provided.

I. Specify the desired beneficial use of water and the requested season of use or number of acres required:

☐ Irrigation _____ (number of acres) Duration: Subject to IDWR standard seasons of use

☐ Commercial from: _____ (mm/dd) to: _____ (mm/dd)

☐ Stockwater from: _____ (mm/dd) to: _____ (mm/dd)

☐ Industrial from: _____ (mm/dd) to: _____ (mm/dd)

☑ Other: 1.7 acre-feet for recreation storage from: 01/01 (mm/dd) to: 12/31 (mm/dd)

J. For irrigation uses, do you propose to divert water at a rate greater than 0.02 cfs/acre? N/A ☑ Yes ☐ No ☐
If yes, justify the rate of flow and attach any supporting documents as **Attachment 3J**. Justification may include information on soil composition, conveyance losses, crop type, irrigation systems, public access areas, etc. A rate of 0.03 cfs/acre is permissible for irrigation of 5 acres or less.
N/A.

K. Do you own the land at the proposed rental place of use (POU)? Yes ☑ No ☐
If no, attach documentation from the POU owner/operator confirming your authorization to use the POU and label it **Attachment 3K**.

L. List all other water rights and sources of water at the rental place of use for the same purpose, including privately owned water rights and water received from a municipal supplier, an irrigation district, a canal company or any other water delivery entity. Explain why additional water is required:
37-539H and 37-539L provide irrigation uses on applicant's property. Recently filed application for permit 37-23302 seeks to authorized storage in applicant's ponds, WSB rental is for first fill of ponds.

Application to Rent Water (Continued)

4. RENTAL REQUESTS FOR SPECIFIC WATER RIGHTS

A. Are you requesting to rent specific water rights? Yes ☐ No ☑

If yes, specify below the elements of the water rights you are requesting to rent. **If no**, continue to Question 4B.

Important Information: Diversion rates and volumes sought for rent must be proportionate to the per acre diversion rates and per acre volume limits of the water right under lease contract to the Water Supply Bank. Prior to completing this section, applicants should review all water right lease contracts and any active rental agreements to determine which elements of a water right are available to satisfy a rental request. Lease and rental documents are searchable via IDWR's website.

Water rights identified below must either already be leased to the Bank or a lease proposal should accompany this rental request. **Rental requests for water rights not yet leased to the Bank will be returned if companion lease applications are not provided with the rental request**. For leased rights featuring combined limits, rentals must be consistent with combined diversion rate, volume or acre limits. Combined limits should be listed on a row below water right numbers.

Water Right Elements Leased to Water Supply Bank					Leased totals, minus water right elements involved in active rental agreements, equals water right elements available for rent	Water Supply Bank Rental Request		
Water Right Number (leave blank if sub-total of combined limits)	Nature of Use	Diversion Rate (CFS)	Volume (AF)	Acres (AC)		Diversion Rate (CFS)	Volume (AF)	Acres (AC)
Applicants must ensure the requested rate per acre and volume per acre do not exceed the rate per acre and volume per acre limits of water rights leased to the Water Supply Bank					TOTAL			
						CFS	AF	AC

**Attach multiple copies of this page if space above is insufficient to list all water rights requested to be rented on this application.*

B. If water right conditions, combined limits, or the sum of all water right elements being requested provide an unconventional duty of water (e.g., an unusually low rate per acre or volume per acre for irrigation use), explain how your proposed rental will sufficiently accomplish your intended purposes. Attach a separate page if space is insufficient and label it **Attachment 4B**:

N/A.

C. Does your rental request propose to change the nature of use for any water right(s) being rented? Yes ☑ No ☐

If yes, explain how the water right(s) will be converted to new uses. Include the historic, consumptive use amounts for the water right being rented if you have it, as well as the new consumptive use amount for your proposed beneficial use. If space below is insufficient, attach a separate page and label it **Attachment 4C**:

Applicant seeks to rent 1.7 acre-feet of any available surface water right for first fill of applicant's pond system.

Application to Rent Water (Continued)

5. ADDITIONAL INFORMATION

A. Is this the first time that rental water is being requested for this purpose at the rental place of use? Yes ☑ No ☐

If no, list previous rental requests/agreements and explain why you have not secured a permanent water right for your needs:

N/A.

B. Have you or do you intend to submit an application for permit or transfer proposing a similar use as this rental?

If yes, describe: Yes ☑ No ☐

See application for permit 37-23302.

C. Was this rental application submitted in response to a Notice of Violation (NOV) or a pending NOV? Yes ☑ No ☐

If yes, describe the date and location of the NOV.

Enforcement Case 2020-1642.

D. Additional Information

Applicant seeks to rent 1.7 acre-feet of surface water for first fill of ponds on property. Accompanying application for permit 37-23302 has been filed with IDWR.

DECLARATION

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. I understand that if this rental application is approved, it will be subject to the provisions of Section 42-1766, Idaho Code and all applicable state and federal laws. I understand that the submission of a rental application provides no guarantee for approval of a rental agreement. I also understand that, per Idaho Code 42-201, it is unlawful to divert or use water without a valid water right and that I am not authorized to utilize water as proposed in this application prior to the execution of an approved rental agreement.

Signature of Applicant	Printed Name of Applicant	Date
R L Mitchell	R L Mitchell	9/2/21
Signature of Representative	Printed Name of Representative	Date

Mail to:

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


Path: F:\Projects\Mitchell, Bob\Arcview 9\2021 Irrigation.mxd
SENW
SWNE
SENE
03N18E
3
NESW
NWSE
NESE
0
120
240
480
Feet
Mitchell, Robert
WSB RENTAL APPLICATION
NAIP 2019 AERIAL
Legend
POD
POU
Parcels
N
BROCKWAY ENGINEERING, PLLC.
JJJ - Date: 8/19/2021

Attach 4B

FORM 202 Rev. 09/16

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR PERMIT

To appropriate the public waters of the State of Idaho

AMENDED

Ident. No. 37-23302

RECEIVED
SEP 07 2021
DEPT OF WATER RESOURCES
SOUTHERN REGION

1. Name of applicant(s) Robert Mitchell Phone 415-968-3333
   Name connector (check one): ☐ and ☐ or ☐ and/or
   Mailing address 10620 Bershire Dr. Berkshire Dr. ~~Ct.~~ City Los Altos
   State CA ZIP 94024 Email

2. Name of representative, if any Zach Latham; Brockway Engineering PLLC Phone 208-736-8543
   Mailing address 2016 Washington St. N Suite #4 City Twin Falls
   State ID ZIP 83301 Email zach.latham@brockwayeng.com
   a. ☐ Send all correspondence for this application to the representative and not to the applicant OR
      ☑ Send original correspondence to the applicant and copies to the representative.
   b. ☑ The representative may submit information for the applicant but is not authorized to sign for the applicant OR
      ☐ The representative is authorized to sign for the applicant. Attach a Power of Attorney or other documentation.

3. Source of water supply East Fork Big Wood River which is a tributary of Big Wood River

4. Location of point(s) of diversion:

Twp	Rge	Sec	Govt Lot	¼	¼	¼	County	Source	Local name or tag #
03N	18E	3			SE	NE	BLAINE	East Fork Big Wood River	Existing Diversion

5. Water will be used for the following purposes:
   Amount 0.98 cfs (cfs or acre-feet per year) for Diversion to Storage purposes from 4/15 to 10/31 (both dates inclusive)
   Amount 2.4 AF (cfs or acre-feet per year) for Aesthetic Storage purposes from 01/01 to 12/31 (both dates inclusive)
   Amount 2.4 AF (cfs or acre-feet per year) for Recreation Storage purposes from 01/01 to 12/31 (both dates inclusive)
   Amount 2.4 AF (cfs or acre-feet per year) for Wildlife Storage purposes from 01/01 to 12/31 (both dates inclusive)

6. Total quantity to be appropriated is (a) 0.98 cubic feet per second (cfs) and/or (b) 2.4 acre-feet per year (af).

7. Proposed diverting works:
   a. Describe type and size of devices used to divert water from the source. Existing headgate and ditch.
   b. Height of storage dam N/A. feet; active reservoir capacity N/A. acre-feet; total reservoir capacity N/A. acre-feet. If the reservoir will be filled more than once each year, describe the refill plan in item 12. For dams 10 feet or more in height AND having a storage capacity of 50 acre-feet or more, submit a separate Application for Construction or Enlargement of a New or Existing Dam. Application required? ☐ Yes ☐ No
   c. Proposed well diameter is N/A. inches; proposed depth of well is N/A. feet.
   d. Is ground water with a temperature of greater than 85°F being sought? ☐ Yes ☑ No
   e. If well is already drilled, when? N/A.; drilling firm N/A.; well was drilled for (well owner) N/A.; Drilling Permit No. N/A.

For Department Use

Received by C. SKINNER Date 9/7/2021 Time _____ Preliminary check by _____
Fee $ 250.00 Receipted by _____ Receipt No. _____ Date _____

8. Description of proposed uses (if irrigation only, go to item 9):
   a. Hydropower; show total feet of head and proposed capacity in kW. _____
   b. Stockwatering; list number and kind of livestock. _____
   c. Municipal; must complete and attach the Municipal Water Right Application Checklist.
   d. Domestic; show number of households _____
   e. Other; describe fully. Aesthetic, Wildlife and Aesthetic storage in existing ponds.

9. Description of place of use:
   a. If water is for irrigation, indicate acreage in each subdivision in the tabulation below.
   b. If water is used for other purposes, place a symbol of the use (example: D for Domestic) in the corresponding place of use below. See instructions for standard symbols.

TWP	RGE	SEC	NE				NW				SW				SE				TOTALS
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
03N	18E	3									WRJ					WRJ			

Total number of acres to be irrigated: _____

10. Describe any other water rights used for the same purposes as described above. Include water delivered by a municipality, canal company, or irrigation district. If this application is for domestic purposes, do you intend to use this water, water from another source, or both, to irrigate your lawn, garden, and/or landscaping? None.

11. a. Who owns the property at the point of diversion? Hyndman Peak Homeowners Association.
    b. Who owns the land to be irrigated or place of use? Applicant.
    c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing: Applicant is member of HOA, proposes to utilize existing POD associated with existing, authorized WR's.

12. Describe your proposal in narrative form, and provide additional explanation for any of the items above. Attach additional pages if necessary. Applicant seeks new, non-consumptive water right for storage uses in existing ponds. Applicant seeks to mitigate for open water surface evaporation associate with the ponds, with existing water rights owned by the applicant. First fill of ponds will occur through rental of a surface water right sufficient to provide the first fill volume for the ponds.

13. Time required for completion of works and application of water to proposed beneficial use is 5 years (minimum 1 year).

14. **MAP OF PROPOSED PROJECT REQUIRED** - Attach an 8½" x 11" map or maps clearly identifying the proposed point of diversion, place of use, section #, township & range. The map scale shall not be less than two (2) inches equal to one (1) mile.

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.

R L Mitchell
Signature of Applicant

R L Mitchell
Print Name (and title, if applicable)

Signature of Applicant

Print Name (and title, if applicable)

Robert Mitchell- Pond Evaporative Loss Calculations and Mitigating WR Portion to Transfer

Brockway Engineering PLLC

5/28/2021

Approximate Mitchell Ponds Elevation (ft): 5840

Approximate Ketchum Ranger Station Elevation (ft): 5880

Line:	*Ketchum NWS:	
1	Ponds 1 and 3 Surface Area (acres):	0.70
2	*Open Water- Shallow Systems (ponds/streams) (Pdef) (mm):	289
3	*Open Water- Shallow Systems (ponds/streams) (Pdef) (ft):	0.95
4	**Ponds 1 and 3 Evaporative Consumptive Use (acre-ft):**	**0.66**
5	*Grass Pasture, Low Management Annual (Pdef) (mm):	414
6	*Grass Pasture, Low Management Annual (Pdef) (ft):	1.36
7	**Acres of Grass Pasture, Low Management Dry Up to meet Ponds 1 & 3 CU (acres):**	**0.49**

* Allen, Richard G. and Clarence W. Robison, 2017. Evapotranspiration and Consumptive Irrigation Water Requirements for Idaho: Supplement updating the Time Series through December 2016, Research Technical Completion Report, Kimberly Research and Extension Center, University of Idaho, Moscow, ID.

Summary of Mitigating Water Right: 37-20379

Priority:	Acres:	Diversion Rate (cfs):	Diversion Volume (ac-ft):
6/3/1884	10	0.33	N/A.

Portion of 37-20379 to be Dried Up:

Priority:	Acres:	Diversion Rate (cfs):	Diversion Volume (ac-ft):
6/3/1884	0.5	0.02	N/A.

Remaining Portion of 37-20379:

Priority:	Acres:	Diversion Rate (cfs):	Diversion Volume (ac-ft):
6/3/1884	9.5	0.31	N/A.

SCANNED
AUG 09 2021

Form 42-1761-2 10/15

STATE OF IDAHO
WATER RESOURCE BOARD

APPLICATION TO RENT WATER FROM THE BOARD'S WATER SUPPLY BANK

COPY

RECEIVED
SEP 07 2021
DEPT OF WATER RESOURCES
SOUTHERN REGION

Applicant Name: Robert Mitchell

Is this application being submitted with a lease application as a lease/rental package? Yes ☐ No ☑
If yes, specify companion water rights in Section 4

This application must be completed according to the minimum requirement checklist below. This checklist is part of the rental application and must be included with the rental application. **Applications that do not meet the minimum requirements will not be placed in the processing queue and may be returned until all minimum requirements have been met.**

Rental applications should be submitted well in advance of the desired start date for the use of rental water. Rental applications may be processed as early as November 1 of the year prior to the intended use of rental water. Any rental application received on or before November 1 for use in the next year will be assigned a received date of November 1. Rental applications submitted more than one year in advance of the proposed start date for the use of rental water will not be accepted and will be returned to applicants. Rental applications may be returned to applicants if the desired start date for the use of rental water cannot be accommodated by the Water Supply Bank. Rental requests will not be accepted once the rental season of use period has concluded.

One rental application per beneficial use of water. For multiple beneficial uses of water, separate rental requests should be submitted for each unique beneficial use of water. One rental application can be submitted if you propose to rent water from multiple sources.

For additional instructions on completing a rental application, visit the Bank's website at http://idwr.idaho.gov/water_supply_bank.

MINIMUM REQUIREMENT CHECKLIST

Check All Items as Either Attached (Yes) or Not Applicable (N/A)

		Yes	
		☑	Completed *Application to Rent Water from the Board's Water Supply Bank*
		☑	Confirmation that this form has been printed single sided, per requirement of the Water Supply Bank
Attachment	**N/A**	**Yes**	
2		☑	A map showing the proposed point(s) of diversion, place(s) of use, and water diversion and distribution systems proposed to be used with your rental request
3A	☐	☑	Detailed information on a proposed use of rental water
3F	☑	☐	Authorization from the owner/operator of the rental point(s) of diversion
3H	☑	☐	Water modeling to account for the impacts of the rental request
3J	☑	☐	Documents justifying a rate of flow greater than 0.02 cfs/acre
3K	☐	☑	Authorization from the owner/operator of the property at the proposed rental place(s) of use
4B	☐	☑	Explanation of how the rental water will sufficiently accomplish your rental purposes
4C	☐	☑	Explanation of consumptive use amounts for water rights experiencing a change in nature of use

Department Use Only – Proposed Water Right(s)

STATE OF IDAHO
WATER RESOURCE BOARD

Application to Rent Water (Continued)

1. CONTACT INFORMATION

A. Applicant Robert Mitchell

Mailing Address 10620 Bershire Dr. Los Altos CA 94024
Street City State Zip Code

Email Address _____ Phone Number 415-968-3333

B. Is this application being completed by an authorized representative on behalf of the applicant? Yes ☑ No ☐
If yes, representatives (includes company employees if the applicant is a corporation, as well as legal counsel or consultants) should provide their information below if they desire to be included on correspondence with the rental applicant.

Representative Zach Latham Professional Title Hydrologist

Organization Brockway Engineering PLLC Relationship to Applicant Consultant

Mailing Address 2016 Washington St. North Suite #4 Twin Falls, ID 83333

Email Address zach.latham@brockwayeng.com Phone Number 208-736-8543

2. MAP

Create a map of the proposed point(s) of diversion, place(s) of use and water diversion, delivery and distribution systems. Make sure the rental place of use is outlined and annotated with legal land descriptions (Township, Range, Section and Quarter-Quarters) or with GPS coordinates. For irrigation purposes, mark the number of acres you desire to irrigate. Attach the map to this application and label it **Attachment 2**.

3. DESCRIPTION OF PROPOSED USE FOR RENTAL WATER

A. Describe why you desire to rent water and provide a detailed description of your proposed use. If the proposed use is not for irrigation, describe in detail how you determined the amount of rental water required. If the space below is insufficient, attach additional sheets as required and label them **Attachment 3A**:

Applicant seeks to rent 1.7 acre-feet of surface water for first fill of ponds on property. Accompanying application for permit 37-23302 has been filed with IDWR.

B. Enter the desired and/or minimum rates of flow, volume, or irrigable acres requested for your rental purposes:

Desired Rate (Cubic Feet/Second)	Desired Volume (Acre-Foot)	Minimum Rate* (Cubic Feet/Second)	Minimum Volume* (Acre-Foot)	Desired Acres (if applicable)
CFS	1.7 AF	CFS	1.7 AF	AC

* ***Sometimes water rights provide an exceptionally low rate per acre and/or low volume per acre. This section is meant to establish an acceptable range of water sufficient for your proposed water use. Please see question 4B and complete if necessary.***

C. This section must be completed in full. Enter the proposed start date and latest possible start date for using rental water as well as the number of years you would like to rent water. The latest possible start is the latest possible date by which you would be willing to pay for a rental and be able to benefit from utilizing rental water.

Desired Start Date (month/day/year)	Latest Possible Start Date (month/day/year)	*Mark Desired Rental Duration (Calendar Years)					**Applicant's preference if rental application cannot be processed prior to the latest possible start?	
4/15/22	8/1/22	☐ 1	☐ 2	☐ 3	☐ 4	☑ 5	☑ Process application as soon as possible	☐ Return application to applicant

* ***The number of years permissible for a rental is subject to the lease contract duration for the water right(s) being rented.***

** ***Per Idaho Code 42-201, it is unlawful to divert or use water without a valid water right. Water Supply Bank rental applicants are not authorized to utilize rental water prior to the execution of an approved rental agreement. Rental requests may be returned to applicants if no water is available from the Bank to fulfill a rental request.***

STATE OF IDAHO
WATER RESOURCE BOARD

Application to Rent Water (Continued)

D. Describe your water distribution system and how rental water will be delivered from the point(s) of diversion (POD) to the proposed place of use (POU):
Water will be diverted at existing POD associated with applicant's existing irrigation water rights 37-539H and 37-539L to ponds on applicant's property.

E. Describe the physical type (pump, headgate, etc.) and location of the POD from which rental water is proposed to be diverted:

POD Description	Water Source	Other Water Rights Diverted from this POD
Existing Diversion	East Fork Big Wood River	37-539H, 37-539L

If the POD(s) above are located where water is turned into a canal, lateral or ditch, or if they are located on your property but are serviced by water that is delivered via a canal, lateral or ditch, your rental request must include documented authorization from all relevant canal companies, irrigation districts and/or water delivery entities, confirming that they consent to your diversion of water from their system.

F. Has documented consent from all relevant water delivery entities been obtained? Yes ☐ N/A ☑
If yes, include documented consent as **Attachment 3F.**

G. Do any POD(s) identified in Question 3E divert from a water source that may require water modeling? Yes ☐ No ☑
Refer to the Water Modeling Requirements Information Sheet to determine if a rental POD may require water modeling.

H. Has water modeling been provided with your rental request? Yes ☐ N/A ☑
If yes, label modeling Attachment 3 H.
Rental applications that require modeling will be returned if modeling is not provided.

I. Specify the desired beneficial use of water and the requested season of use or number of acres required:

☐ Irrigation _____ (number of acres) Duration: Subject to IDWR standard seasons of use

☐ Commercial from: _____ (mm/dd) to: _____ (mm/dd)

☐ Stockwater from: _____ (mm/dd) to: _____ (mm/dd)

☐ Industrial from: _____ (mm/dd) to: _____ (mm/dd)

☑ Other: 1.7 acre-feet for recreation storage from: 01/01 (mm/dd) to: 12/31 (mm/dd)

J. For irrigation uses, do you propose to divert water at a rate greater than 0.02 cfs/acre? N/A ☑ Yes ☐ No ☐
If yes, justify the rate of flow and attach any supporting documents as **Attachment 3J**. Justification may include information on soil composition, conveyance losses, crop type, irrigation systems, public access areas, etc. A rate of 0.03 cfs/acre is permissible for irrigation of 5 acres or less.
N/A.

K. Do you own the land at the proposed rental place of use (POU)? Yes ☑ No ☐
If no, attach documentation from the POU owner/operator confirming your authorization to use the POU and label it **Attachment 3K.**

L. List all other water rights and sources of water at the rental place of use for the same purpose, including privately owned water rights and water received from a municipal supplier, an irrigation district, a canal company or any other water delivery entity. Explain why additional water is required:
37-539H and 37-539L provide irrigation uses on applicant's property. Recently filed application for permit 37-23302 seeks to authorized storage in applicant's ponds, WSB rental is for first fill of ponds.

STATE OF IDAHO
WATER RESOURCE BOARD

Application to Rent Water (Continued)

4. RENTAL REQUESTS FOR SPECIFIC WATER RIGHTS

A. Are you requesting to rent specific water rights? Yes ☐ No ☑

If yes, specify below the elements of the water rights you are requesting to rent. **If no**, continue to Question 4B.

Important Information: Diversion rates and volumes sought for rent must be proportionate to the per acre diversion rates and per acre volume limits of the water right under lease contract to the Water Supply Bank. Prior to completing this section, applicants should review all water right lease contracts and any active rental agreements to determine which elements of a water right are available to satisfy a rental request. Lease and rental documents are searchable via IDWR's website.

Water rights identified below must either already be leased to the Bank or a lease proposal should accompany this rental request. **Rental requests for water rights not yet leased to the Bank will be returned if companion lease applications are not provided with the rental request.** For leased rights featuring combined limits, rentals must be consistent with combined diversion rate, volume or acre limits. Combined limits should be listed on a row below water right numbers.

Water Right Elements Leased to Water Supply Bank					Leased totals, minus water right elements involved in active rental agreements, equals water right elements available for rent	Water Supply Bank Rental Request		
Water Right Number (leave blank if sub-total of combined limits)	Nature of Use	Diversion Rate (CFS)	Volume (AF)	Acres (AC)		Diversion Rate (CFS)	Volume (AF)	Acres (AC)
Applicants must ensure the requested rate per acre and volume per acre do not exceed the rate per acre and volume per acre limits of water rights leased to the Water Supply Bank					TOTAL			
						CFS	AF	AC

**Attach multiple copies of this page if space above is insufficient to list all water rights requested to be rented on this application.*

B. If water right conditions, combined limits, or the sum of all water right elements being requested provide an unconventional duty of water (e.g., an unusually low rate per acre or volume per acre for irrigation use), explain how your proposed rental will sufficiently accomplish your intended purposes. Attach a separate page if space is insufficient and label it **Attachment 4B**:

N/A.

C. Does your rental request propose to change the nature of use for any water right(s) being rented? Yes ☑ No ☐

If yes, explain how the water right(s) will be converted to new uses. Include the historic, consumptive use amounts for the water right being rented if you have it, as well as the new consumptive use amount for your proposed beneficial use. If space below is insufficient, attach a separate page and label it **Attachment 4C**:

Applicant seeks to rent 1.7 acre-feet of any available surface water right for first fill of applicant's pond system.

STATE OF IDAHO
WATER RESOURCE BOARD

RECEIVED
SEP 07 2021
DEPT OF WATER RESOURCES
SOUTHERN REGION

Application to Rent Water (Continued)

5. ADDITIONAL INFORMATION

A. Is this the first time that rental water is being requested for this purpose at the rental place of use? Yes ☑ No ☐
If no, list previous rental requests/agreements and explain why you have not secured a permanent water right for your needs:
N/A.

B. Have you or do you intend to submit an application for permit or transfer proposing a similar use as this rental? Yes ☑ No ☐
If yes, describe:
See application for permit 37-23302.

C. Was this rental application submitted in response to a Notice of Violation (NOV) or a pending NOV? Yes ☑ No ☐
If yes, describe the date and location of the NOV.
Enforcement Case 2020-1642.

D. Additional Information
Applicant seeks to rent 1.7 acre-feet of surface water for first fill of ponds on property. Accompanying application for permit 37-23302 has been filed with IDWR.

DECLARATION

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. I understand that if this rental application is approved, it will be subject to the provisions of Section 42-1766, Idaho Code and all applicable state and federal laws. I understand that the submission of a rental application provides no guarantee for approval of a rental agreement. I also understand that, per Idaho Code 42-201, it is unlawful to divert or use water without a valid water right and that I am not authorized to utilize water as proposed in this application prior to the execution of an approved rental agreement.

Signature of Applicant	Printed Name of Applicant	Date
R L Mitchell	R L Mitchell	9/2/21
Signature of Representative	Printed Name of Representative	Date

Mail to:

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

STATE OF IDAHO
WATER RESOURCE BOARD

Water Modeling Requirement Information Sheet

Information on water modeling requirements for rental requests within special administrative areas

Important information on requesting rental water within special administrative areas: Refer to the information below to determine whether the modeling of potential impacts from your rental request is necessary. Use Section 4 of the rental application to identify selected water rights. **If you submit an application to rent water from within a special administrative area and water modeling is required, your rental request will be returned if water modeling is not provided.**

Water modeling may be required when an application to rent water involves one of two scenarios:

Scenario 1: The rental request proposes to divert water from a regulated water source and/or within a special administrative area AND the distance between the rental point(s) of diversion (POD) and the POD(s) for the leased water right(s) is greater than the administratively established, acceptable distance.

Regulated water sources may areas include:

A. Ground water resources within the modeled area of the Eastern Snake Plain Aquifer (ESPA) and tributary aquifers;
B. Ground water within Ground Water Management Areas (GWMAs) or Critical Ground Water Areas (CGWAs);
C. Water resources within other specified administrative areas, as established by the Idaho Water Resource Board (IWRB) or the Idaho Department of Water Resources.

The distance between any rental POD(s) and the POD(s) for a leased water right to be rented is important. On the ESPA, distance is measured in terms of model cells that cover an area of one square mile. Ground water modeling is not required if lease POD(s) and rental POD(s) are located within the same model cell or within adjacent model cells. If the lease and rental PODs are separated by more than one model cell groundwater modeling must be completed using the IDWR ESPA Transfer Tool and modeling results must be submitted with the rental application. ESPA modeling tools can be accessed and freely downloaded from IDWR's website by visiting: www.idwr.idaho.gov WaterManagement WaterRights WaterRightTransfers resources.htm.

Ground water modeling may be required within GWMAs, CGWAs or other regulated administrative areas. Applicants who desire to rent water within an established GWMA, CGWA or other regulated administrative area should consult IDWR's website before submitting their application to review the current status of administrative orders related to regulated administrative areas. Consult www.idwr.idaho.gov WaterInformation GroundWaterManagement designated_areas.htm for information on GWMAs or CGWAs, visit https: idwr.maps.arcgis.com home to use mapping tools to find other regulated areas.

Applicants interested in renting water within a GWMA, CGWA or other regulated administrative areas should request water rights that have been leased into the Bank from within the same administrative area. Generally, the Bank will not permit a rental of water within a regulated administrative area if the leased water rights are not located within that same administrative area.

Scenario 2: A rental request proposes to divert water from a different but hydraulically connected water source.

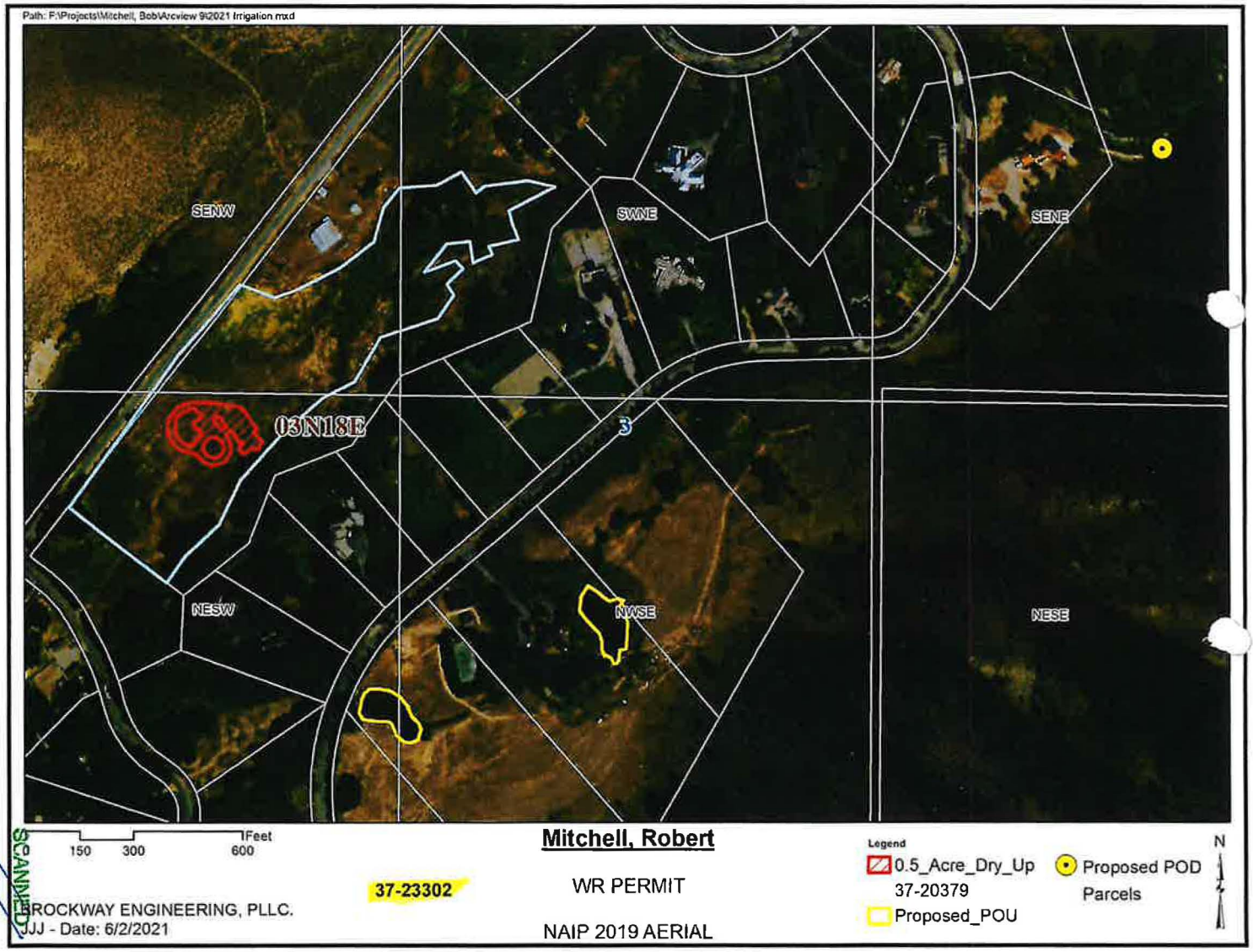
Modeling situations may include:

A. Rental requests that propose to divert surface water rights via ground water POD(s) (wells); and
B. Rental requests that propose to divert ground water from one aquifer when the right being rented authorizes the diversion of ground water from a hydraulically connected, tributary aquifer.

Rental requests that propose to divert surface water rights from ground water points of diversion may be considered if ground water modeling establishes that the surface and ground water resources are directly and immediately hydraulically connected. An acceptable hydraulic connection occurs when at least 50 percent of the total depletions from a well are detectable from the original water source within a 24 hour period. The existing (leased) POD and proposed (rental) POD must be proximate such that diversion and use of water from the proposed POD would have substantially the same effect on the hydraulically-connected source as diversion and use of water from the original POD.

Requests to rent ground water across tributary aquifer sources may be considered if ground water modeling is provided to demonstrate that two aquifers are hydraulically connected and the anticipated impacts of diverting ground water from one source through the other is modeled accordingly.

For more information about rental application requirements, contact IDWR at (208) 287-4800.



37-23302

ROCKWAY ENGINEERING, PLLC.
JJJ - Date: 6/2/2021

SCANNED
AUG 04 2021

Maline, Denise

From: Maline, Denise
Sent: Friday, November 12, 2021 9:34 AM
To: Kevin Lakey (WD37)
Subject: Comment Letters for Water Right Applications
Attachments: Comment letter to WD37 for 37-23298, 37-23298, 37-23302, & 85194.docx; 37-23302 (Robert Mitchell).pdf; Transfer 85194 (Nature Conservancy, et al).pdf; 37-23299 (Picabo Livestock).pdf; 37-23298 (Mid Valley Water).pdf

Good morning Kevin,

Attached are 3 applications for permit and 1 application for transfer, currently being processed by the department. Please review the applications and provide any necessary comments within 21 days.

If you have any questions regarding these applications, please feel free to contact our office at (208) 736-3033.

Thank you in advance,

Denise @ IDWR

Denise Maline, Administrative Assistant
Idaho Dept of Water Resources, Southern Region
650 Addison Ave W Ste 500
Twin Falls ID 83301-5858
(208) 293-9908
denise.maline@idwr.idaho.gov

IDAHO DEPARTMENT OF
WATER RESOURCES

Southern Region • 650 Addison Ave W, Suite 500 • Twin Falls, ID 83301-5858
Phone: 208-736-3033 • Fax: 208-736-3037 • Email: southerninfo@idwr.idaho.gov • Web: idwr.idaho.gov

Governor Brad Little **Director Gary Spackman**

November 12, 2021

WATER DISTRICT 37
KEVIN D LAKEY
107 W 1ST
SHOSHONE, ID 83352

RE: Transfer No. 85194 (Nature Conservancy & Wood River Land Trust)
Application for Permit No. 37-23298 (Mid Valley Water Company)
Application for Permit No. 37-23299 (Picabo Livestock Company)
Application for Permit No. 37-23302 (Robert Mitchell)

Dear Kevin:

The Idaho Department of Water Resources (IDWR) is seeking written comment and/or recommendations from you regarding the above referenced water right application. You can find a copy of the application at: https://idwr.idaho.gov/apps/ExtSearch/WRAJSearch/WRADJSearch.aspx. Please review the application, then complete the enclosed recommendation form and return it to this office within 21 days of the date of this letter.

If the application is approved, IDWR will include appropriate standard conditions of approval for a water right located within a water district, such as regulation by the watermaster, lockable controlling works, and/or measuring devices. Any special conditions or other concerns you have related to this application should be specifically addressed in your recommendation.

IDWR can finish reviewing an unprotested application as soon as the protest period has past. Your prompt response to this request will ensure that your recommendation can be considered. If IDWR has not received your written recommendation within 21 days from the date of this letter, IDWR will presume that you do not oppose approval of the application and that you have no comments for IDWR to consider.

Sincerely,

Denise Maline

Denise Maline
Administrative Assistant 1

Enclosure(s)

Maline, Denise

From: Maline, Denise
Sent: Friday, November 12, 2021 9:17 AM
To: Dawson,Bradley
Subject: Comment Letters for Water Right Applications
Attachments: 45-14539 (Albion 12 Investments).pdf; Transfer 85194 (Nature Conservancy, et al).pdf; 37-23302 (Robert Mitchell).pdf; Comment letter to F&G for 37-23302, 45-14539 & 85194.docx

Good morning,

Attached are 2 applications for permit and 1 application for transfer, currently being processed by the department. Please review the applications and provide any necessary comments within 21 days.

If you have any questions regarding these applications, please feel free to contact our office at (208) 736-3033.

Thank you in advance,

Denise @ IDWR

Denise Maline, Administrative Assistant
Idaho Dept of Water Resources, Southern Region
650 Addison Ave W Ste 500
Twin Falls ID 83301-5858
(208) 293-9908
denise.maline@idwr.idaho.gov

IDAHO DEPARTMENT OF
WATER RESOURCES

Southern Region • 650 Addison Ave W, Suite 500 • Twin Falls, ID 83301-5858
Phone: 208-736-3033 • Fax: 208-736-3037 • Email: southerninfo@idwr.idaho.gov • Web: idwr.idaho.gov

Governor Brad Little **Director Gary Spackman**

November 12, 2021

IDAHO DEPT OF FISH & GAME
BRADLEY DAWSON
324 S 417 E STE 1
JEROME ID 83338-6206

RE: Transfer No. 85194 (Nature Conservancy & Wood River Land Trust)
Application for Permit No. 37-23302 (Robert Mitchell)
Application for Permit No. 45-14539 (Albion 12 Investments LLC) **Re-advertisement**

Dear Mr. Dawson:

The Idaho Department of Water Resources (IDWR) is seeking written comment and/or recommendations from your organization regarding the above referenced water right application. *You can find a complete copy of the application(s) at:* https://idwr.idaho.gov/apps/ExtSearch/WRAJSearch/WRADJSearch.aspx. Please review the application, complete the enclosed recommendation form, and submit it to this office within 21 days of the date of this letter.

IDWR can finish reviewing an unprotested application as soon as the protest period has past. Therefore, your prompt response to this request is appreciated. If your organization desires to formally protest the approval of this application, you may do so after the notice is published by filing a written protest along with a $25.00 filing fee within 10 days after final publication **(on or before December 6, 2021)**.

Please contact this office if you have any questions regarding the application.

Sincerely,

Denise Maline

Denise Maline
Administrative Assistant 1

Enclosure(s)

IDAHO DEPARTMENT OF
WATER RESOURCES

Southern Region • 650 Addison Ave W, Suite 500 • Twin Falls, ID 83301-5858
Phone: 208-736-3033 • Fax: 208-736-3037 • Email: southerninfo@idwr.idaho.gov • Web: idwr.idaho.gov

Governor Brad Little **Director Gary Spackman**

November 10, 2021

ROBERT MITCHELL
10620 BERKSHIRE DR
LOS ALTOS, CA 94024-6555

RE: Application for Permit No. 37-23302

Dear Applicant(s):

The Department of Water Resources has received your water right application. Please refer to the number referenced above in all future correspondence regarding this application.

A legal notice of the application has been prepared and is scheduled for publication in the **IDAHO MOUNTAIN EXPRESS on 11/17/2021 and 11/24/2021**. Protests to this application may be submitted for a period ending ten (10) days after the second publication. Any protest against this application must be filed with the Department of Water Resources, together with a protest fee of $25.00 for each application, on or before **December 6, 2021**.

If the application is protested, you will be sent a copy of each protest. All protests must be resolved before the application can be considered for approval. If the protest(s) cannot be resolved voluntarily, the Department will conduct a conference and/or hearing on the matter.

If the application is not protested, the Department will process your application and notify you of any action taken on the application. If your application is approved, the Department will send you a copy of the permit.

Please contact this office if you have any questions regarding the application.

Sincerely,

Denise Maline

Denise Maline
Administrative Assistant

c: Brockway Engineering PLLC
Fritz Haemmerle, attorney

Maline, Denise

From:	Maline, Denise
Sent:	Wednesday, November 10, 2021 4:59 PM
To:	Idaho Mountain Express
Subject:	LEGAL NOTICE
Attachments:	Idaho Mountain Express cover letter.docx; Idaho Mountain Express Ad.docx

Attached please find **(1)** legal notice being submitted for publication on November 17th & 24th, 2021. Please let me know if there are any questions or if you are not able to run the ad on the dates requested.

Thank you in advance,

Denise @ IDWR Twin Falls

Denise Maline, Administrative Assistant
Idaho Dept of Water Resources, Southern Region
650 Addison Ave W Ste 500
Twin Falls ID 83301-5858
(208) 293-9908
denise.maline@idwr.idaho.gov

IDAHO DEPARTMENT OF
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Governor Brad Little **Director Gary Spackman**

November 10, 2021

LEGAL NOTICE DEPARTMENT
IDAHO MOUNTAIN EXPRESS
PO BOX 1013
KETCHUM, ID 83340

RE: Application for Permit No. 37-23298, 37-23299, 37-23302

RE: Transfer No. 85194
Water Right No(s). 37-22264

Dear Legal Notice Department:

Please publish the enclosed legal notice on the dates indicated (once a week for two consecutive weekly issues). If you cannot publish the notice on the proposed dates, please contact us immediately.

An affidavit of publication must be submitted to the Department along with the publication bill. Please send the affidavit and bill to this office before December 6, 2021. Your cooperation is appreciated.

Sincerely,
Denise Maline
Denise Maline
Administrative Assistant

Enclosure(s)

The following application(s) have been filed to appropriate the public waters of the State of Idaho:

37-23298
MID VALLEY WATER COMPANY LLC
PO BOX 4380
KETCHUM, ID 83340-4380
Point of Diversion NENWSE S31 T04N R18E BLAINE County Source GROUND WATER Tributary
Point of Diversion SENWSE S31 T04N R18E BLAINE County Source GROUND WATER Tributary
Point of Diversion SENWSE S31 T04N R18E BLAINE County Source GROUND WATER Tributary
Point of Diversion NESWNE S31 T04N R18E BLAINE County Source GROUND WATER Tributary
Use: DOMESTIC 01/01 to 12/31 0.4 CFS
Total Diversion: 0.4 CFS
Date Filed: 05-07-2021
Place Of Use: DOMESTIC
T04N R18E S31 NENE, NWNE
Application proposes to appropriate up to 0.40 cfs of ground water for domestic purposes from three existing wells and one authorized well to be constructed. Application is seeking to provide domestic water for nine lots with 0.5 acres of irrigation per lot. Three of the nine lots will have thirty-six single residence housing units and six lots will have one residence per lot. Place of use and the wells are all located approximately 2.0 to 2.7 miles north and 0.0 to 0.2 miles west of the intersection of East Fork Big Wood River Rd & HWY 75. This application proposes to appropriate trust water and will be evaluated in compliance with Section 42-203C, Idaho Code, and IDWR's Water Appropriation Rules, IDAPA 37.03.08.

37-23299
PICABO LIVESTOCK CO
PO BOX 688
PICABO, ID 83348-0688
Point of Diversion NWSWSW S27 T01S R20E BLAINE County Source GROUND WATER Tributary
Point of Diversion NESWSW S27 T01S R20E BLAINE County Source GROUND WATER Tributary
Use: DOMESTIC 01/01 to 12/31 0.58 CFS
Use: FIRE PROTECTION 01/01 to 12/31 0.58 CFS
Total Diversion: 0.58 CFS
Date Filed: 02-10-2021
Place Of Use: DOMESTIC, FIRE PROTECTION
T01S R20E S26 SWSW, SESW, SWSE
Place Of Use: DOMESTIC,FIRE PROTECTION
T01S R20E S27 SWNE, SENW, SW (ALL), SE (ALL)
Application for permit proposes year-round diversion of up to 0.58 cfs for domestic use and fire protection use from two existing wells located approximately 0.4 mile southwest of Picabo. The place of use covers the town of Picabo and the Picabo Livestock Company municipal service area. This application proposes to appropriate trust water and will be evaluated in compliance with Section 42-203C, Idaho Code, and IDWR's Water Appropriation Rules, IDAPA 37.03.08.

37-23302
ROBERT MITCHELL
10620 BERKSHIRE DR
LOS ALTOS, CA 94024-6555
Point of Diversion SENE S3 T03N R18E BLAINE County Source EAST FORK WOOD RIVER Tributary BIG WOOD RIVER
Use: AESTHETIC STORAGE 01/01 to 12/31 2.4 AF
Use: RECREATION STORAGE 01/01 to 12/31 2.4 AF
Use: WILDLIFE STORAGE 01/01 to 12/31 2.4 AF
Use: DIVERSION TO STORAGE 04/15 to 10/31 0.98 CFS
Total Diversion: 0.98 CFS, 2.4 AF
Date Filed: 06-08-2021
Place Of Use: AESTHETIC STORAGE, RECREATION STORAGE, WILDLIFE STORAGE
T03N R18E S3 NESW, NWSE

Application for permit proposes the appropriation of 0.98 cfs and 2.4 af from the East Fork of The Big Wood River for uses associated with 2 lined ponds. A mitigation plan was submitted with the application to account for evaporative losses and initial fill of ponds. Point of diversion and place of use are located approximately 2.7 to 3.1 miles east and 0.8 to 1.1 miles north of the intersection of the East Fork Big Wood River Rd and Hwy 75. This application proposes to appropriate trust water and will be evaluated in compliance with Section 42-203C, Idaho Code, and IDWR's Water Appropriation Rules, IDAPA 37.03.08.

NOTICE OF PROPOSED CHANGE OF WATER RIGHT
TRANSFER NO. 85194

THE NATURE CONSERVANCY, 116 N 1ST AVE, HAILEY, ID 83333-8411; WOOD RIVER LAND TRUST CO, 119 E BULLION ST, HAILEY, ID 83333-8770 has filed Application No. 85194 for changes to the following water rights within BLAINE County(s): Right No(s). 37-22264. The purpose of the transfer is to change a portion of the above rights as follows: Application proposes changing the nature of use of a 1.0 acre portion of a 5.3 acre irrigation Guy Creek water right. The proposed change in nature of use will be from irrigation to stockwater (0.04 cfs; 1.9 af) for use in three troughs that will be supplied by two proposed points of diversion (PODs). Current POD and place of use (POU) are located approximately 5.9 miles west and 3.0 to 3.2 miles north of the intersection of Hwy 20 and Hwy 75. Proposed PODs and POU are located upstream approximately 1.7 miles north and 0.9 to 1.6 miles west of the current POU and POD.

Permits will be subject to all prior water rights. For additional information concerning the property locations, contact Southern Region office at (208) 736-3033; or for a full description of the rights &/or proposed transfer, please see https://research.idwr.idaho.gov. Protests may be submitted based on the criteria of Sec 42-222 and 42-203A, Idaho Code. Any protest against the approval of this application(s) must be filed with the Director, Dept. of Water Resources, Southern Region, 650 ADDISON AVE W, STE 500, TWIN FALLS, ID 83301-5858 together with a protest fee of $25.00 for each application on or before **December 6, 2021**. The protestant must also send a copy of the protest to the applicant.

GARY SPACKMAN, Director
Published on November 17th & 24th, 2021

IDAHO DEPARTMENT OF
WATER RESOURCES

Southern Region • 650 Addison Ave W, Suite 500 • Twin Falls, ID 83301-5858
Phone: 208-736-3033 • Fax: 208-736-3037 • Email: southerninfo@idwr.idaho.gov • Web: idwr.idaho.gov

Governor Brad Little **Director Gary Spackman**

October 18, 2021

ROBERT MITCHELL
10620 BERKSHIRE DR
LOS ALTOS CA 94024-6555

RE: Application for Permit to Appropriate Trust Water – No. 37-23302

Dear Applicant:

The Department of Water Resources ("Department") has received your application for permit to appropriate water and has accepted it for filing. Your application has been assigned the identification number referenced in the subject line of this letter. Please refer to that number in all future correspondence regarding this application.

Your application proposes to appropriate Trust Water as described in this letter. The special nature of the trust affects how the Department will process your application as well as some aspects of the water right that may result. The purpose of this letter is to inform you of three items specific to applications proposing to appropriate Trust Water:

1. Your application will be subject to additional evaluation compared to applications that do not propose the use of Trust Water. This may require you to submit additional information and to demonstrate that your application meets the statutory evaluation criteria for appropriating Trust Water.
2. If a water right is issued to you, it could be subject to curtailment to satisfy senior minimum stream flow water rights on the Snake River at the Murphy Gage.
3. If a water right is issued to you, it will be subject to a periodic term review that may impact the future use of the right.

To understand better these three items and why they apply to your application, it helps to understand what Trust Water is and how it came about.

Trust Water arose from the 1984 Swan Falls Settlement between Idaho Power Company ("IPC") and the State of Idaho ("State").[1] Prior to the Swan Falls Settlement, the Idaho Supreme Court determined IPC held water rights for use at Swan Falls Dam that exceeded the entire flow of the Snake River at times. This limited future upstream development of water resources in the Snake River Basin. The Swan Falls Settlement resulted in changes to Idaho Law[2] and to IPC's water rights. As a result of the Swan Falls Settlement and subsequent legislation and court decrees, IPC's hydropower water rights in excess of the minimum flows at Murphy Gage are held in trust by the State. This change allows future development using water that would have previously

[1] For more information, including a more complete description of the Swan Falls Settlement and resulting legislation, please see the Department's web page: https://idwr.idaho.gov/legal-actions/settlements/swan-falls/.

[2] Although several sections of the Idaho Code were affected, the addition of Sections 42-203B and 42-203C, Idaho Code are the changes most relevant to this discussion.

been delivered to satisfy IPC water rights at Swan Falls Dam and, therefore, would have been unavailable for upstream appropriation. The purpose of this trust is defined in Idaho Code § 42-203B as follows:

> The purposes of the trust established by ... this section are to assure an adequate supply of water for all future beneficial uses and to clarify and protect the right of a user of water for power purposes ... to continue using the water pending approval of depletionary future beneficial uses.

Your application proposes a use of water that could deplete the rights placed in trust, so the State, through the Department must evaluate your proposal under the laws and rules that came after the Swan Falls Settlement.[3] In addition to the usual statutory process and evaluation criteria, the Department must also evaluate whether your application will deplete Trust Water and, if so, whether your depletion of Trust Water is in the public interest.

In addition, the availability of Trust Water and the public's interest in the use of Trust Water could change over time. The Department will periodically review rights to use Trust Water to determine if Trust Water remains available for use and if the continued use of Trust Water is in the public interest. The periodic review will occur for any right that issues from your application. A future review by the Department could terminate or limit your ability to use the right in the future.

An important aspect of the Swan Falls Settlement is that the State agreed to protect the minimum stream flows in the Snake River at the Murphy Gage. Should the flows at the Murphy Gage fall below these minimums, the water rights that use Trust Water could be curtailed to restore flow to meet those minimums.

The Department will hold your application for 14 days to allow you time to contact us if you have further questions on this topic or if you choose to withdraw your application. If the Department does not hear from you within 14 days, the Department will process your application and prepare it for publication. If you choose to withdraw your application before it is submitted for publication, you will receive a full refund of your filing fee. Refunds are not available if an application is withdrawn after advertising.

Please contact this office if you have questions regarding this matter.

Sincerely,

Bill Mills
Water Resource Agent, Senior

Enclosure: Withdrawal of Application form

c: Fritz X. Haemmerle; Zach Latham

---

[3] See Sections 42-203C and the Department's Water Appropriation Rules (IDAPA 37.03.08).

HAEMMERLE LAW, P.
Attorney & Counselor at Law

Fritz X. Haemmerle
fxh@haemlaw.com

P.O. Box 1800
Hailey, ID 83333

400 South Main Street, Suite 102
Tel: (208) 578-0520
Fax: (208) 578-0564

RECEIVED
SEP 07 2021
DEPT OF WATER RESOURCES
SOUTHERN REGION

September 2, 2021

IDWR Southern Region
Attn: Corey Skinner
650 Addison Ave. W, Suite 500
Twin Falls, ID 83301-5858

Re: Robert Mitchell Amended Permit Application (37-23302)

Dear Corey:

Per your letter dated July 28, 2021, please find enclosed an Amended Application for Permit prepared by Zack Latham. Also, per your letter please be advised that Mr. Latham will be filing the enclosed Application to Rent Water Bank Water with the Boise Office. I am providing you a copy so that you know it has been prepared and will be filed.

I look forward to finalizing this matter. Thank you.

Sincerely,

HAEMMERLE LAW, P.L.L.C.

Fritz X. Haemmerle

FXH: fxh
cc: client

IDAHO DEPARTMENT OF
WATER RESOURCES

322 E Front Street, Suite 648, Boise ID 83702 • PO Box 83720, Boise ID 83720-0098
Phone: 208-287-4800 • Fax: 208-287-6700 • Email: idwrinfo@idwr.idaho.gov • Website: idwr.idaho.gov

Governor Brad Little **Director Mathew Weaver**

May 02, 2024

ROBERT L MITCHELL
10620 BERKSHIRE
LOS ALTOS, CA 94022

RE: RENTAL OF WATER FROM THE WATER SUPPLY BANK
WATER RIGHT NO(S). 37-22736, AGREEMENT 842

Dear Renter:

Please find enclosed a receipt in the amount of **$82.50** and a copy of a fully executed Water Supply Bank Rental Agreement in connection with the rental of 3.5 acre-feet of water for Recreation Storage of 1.0 acre during 2024. Upon receipt of this fully executed agreement, you are authorized to divert water in compliance with the conditions of water use described in the agreement.

Pursuant to the Water Supply Bank Rules, 90% or $72.45 of the rental fee will be paid to the lessor(s) and 10% or $8.05 will be retained by the Department to offset administrative costs. The remaining overage of $2.00 will be applied to the 2025 rental fee.

The annual rental fee for 2025 is due by December 31, 2024. If you have questions regarding this matter, please contact this office at bank@idwr.idaho.gov or 208-287-4800.

Sincerely,

Debra Mansfield
for
Water Supply Bank

Enclosures: Receipt No. C118203
Rental Agreement (copy)

c: Sascha Marston – Fiscal
IDWR Southern Regional Office
Representative – Fritz Haemmerle
Water District 37
Ground Water District 37 – South Valley
IDWR Compliance Officer

Mansfield, Debra

From: Mansfield, Debra
Sent: Wednesday, May 1, 2024 10:31 AM
To: 'fxh@haemmerlelaw.com'
Cc: Bank
Subject: Executed WSB Rental Agreement 842
Attachments: Executed Rental Agreement 842.pdf

Good morning,

Please see the attached copy of executed Water Supply Bank rental Agreement 842, in the name of Robert L Mitchell, for your records.

Thank you,

Debra Mansfield | Technical Records Specialist 1
IDWR – State Office
322 E Front St, Boise ID 83702-7371
(208) 287-4921 | Debra.Mansfield@idwr.idaho.gov

Mansfield, Debra

From: Mansfield, Debra
Sent: Wednesday, May 1, 2024 10:21 AM
To: Skinner, Corey; Palmer, Cherie; svgwd@svskylan.net; Zach Latham; fxh@haemlaw.com; watermanager; IdwrPayable
Cc: Bank
Subject: Executed WSB Rental Agreement 842
Attachments: Executed Rental Agreement 842.pdf

Good morning,

Please see the attached copy of executed Water Supply Bank rental Agreement 842, in the name of Robert L Mitchell, for your records.

Thank you,

Debra Mansfield | Technical Records Specialist 1
IDWR – State Office
322 E Front St, Boise ID 83702-7371
(208) 287-4921 | Debra.Mansfield@idwr.idaho.gov

HAEMMERLE LAW, P.L.L.C

Attorney & Counselor at Law

Fritz X. Haemmerle
fxh@haemmerlelaw.com

P.O. Box 1800
Hailey, ID 83333

400 South Main Street, Suite 102
Tel: (208) 578-0520
Fax: (208) 578-0564

April 25, 2024

RECEIVED

APR 26 2024

DEPT. OF WATER RESOURCES

Idaho Department of Water Resources
Water Supply Bank, c/o Bob Howe
P.O. Box 83702
Boise, ID 83720
And Via e-mail: bank@idwr.idaho.gov

Re: Application to Rent Water from the Water Supply Bank Water Rights No(s) 37-22763 Agreement 842

Dear Sir:

This firm represents Dr. Robert Mitchell regarding the aforementioned Water Bank Lease. Please find enclosed: (1) a Water Supply Bank Rental Agreement signed by Mr. Robert Mitchell; and (2) a check for $80.50 payable to the Idaho Department of Water Resources.

Thank you.

Sincerely,

HAEMMERLE LAW, P.L.L.C.



Fritz X. Haemmerle

FXH: fxh
cc: client

IDAHO DEPARTMENT OF
WATER RESOURCES

322 E Front Street, Suite 648, Boise ID 83702 • PO Box 83720, Boise ID 83720-0098
Phone: 208-287-4800 • Fax: 208-287-6700 • Email: idwrinfo@idwr.idaho.gov • Website: idwr.idaho.gov

Governor Brad Little **Director Mathew Weaver**

April 24, 2024

ROBERT L MITCHELL
10620 BERKSHIRE
LOS ALTOS, CA 94022

RE: APPLICATION TO RENT WATER FROM THE WATER SUPPLY BANK
WATER RIGHT NO(S). 37-22763 AGREEMENT 842

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

Dear Applicant:

The Department of Water Resources acknowledges receipt of your application to rent water from the Water Supply Bank. **I have enclosed a Water Supply Bank Rental Agreement for your review and signature.** Upon signature and return of the original agreement, together with the rental fee described below, the Department will also sign the original agreement and return an executed copy to you. Execution of the agreement and compliance with the conditions of approval authorize diversion and use of water as provided in the agreement.

A rental fee of $80.50 was calculated based on the current rental rate of $23.00 per acre-foot times a diversion volume of 3.5 acre-feet.

Please send a check for $80.50 for the 2024 season of use made payable to the Idaho Department of Water Resources, **together with the signed rental agreement**, **within 14 days** so I can complete processing.

Pursuant to the Water Supply Bank Rules, 90% or $72.45 of the rental fee will be paid to the lessor(s) and 10% or $8.05 will be retained by the Department to offset administrative costs.

If you have any questions, please contact this office at bank@idwr.idaho.gov or (208) 287-4800.

Sincerely,

Bob Howe

for
Water Supply Bank

Enclosure

c: IDWR Front Desk
Representative- Zach Latham

MEMORANDUM FOR AGREEMENT # 842

To: Water Right(s) 37-22760

From: Bob Howe

Date: March 14, 2024- April 19, 2024

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

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PURPOSE/NARRATIVE: Water Supply Bank ("WSB") rental application 2957 is a second attempt to process rental application 2212 received December 3, 2021. The rental application is proposing to rent 1.7 AF to supply the initial fill volume for two recreational storage ponds proposed under pending water right permit application no. 37-23302 ("37-23302"). 37-23302 proposes diversion of 0.98 cfs from the East Fork Wood River ("EFWR") for aesthetic/recreation/wildlife storage of 2.4 acre-feet per year to fill and maintain two lined ponds, known as Pond #1 and Pond #3, with a total capacity of 1.7 acre-feet and total annual evaporation of 0.7 acre-feet. 37-23302 requires mitigation, because the diversion and proposed uses are within the Big Wood River Ground Water Management Area ("BWRGRMA") Moratorium Area[1]. 37-23302's form states the consumptive use associated with this storage pond will be mitigated by retiring 0.5 acres of irrigation authorized by water right 37-20379. 37-23302 included a sales agreement with draft quitclaim deed to convey ownership of the 0.5 ac portion of 37-20379 to Robert Mitchell (applicant) upon IDWR approval of the mitigation plan. This rental application is for the "one-time fill" authorization to mitigate for diverting water to fill the ponds' capacity. Mr. Mitchell filed the permit and rental applications in response to IDWR Enforcement Action E2020-1462 alleging Mr. Mitchell's diversions to fill ponds contributed to de-watering of the EFWR on September 8, 2020. The enforcement action field investigation is summarized in the Enforcement Action E2020-1642 October 15, 2020, Field Investigation Report ("Enforcement Field Report").

IDWR's Southern Region office advertised 37-23302 in the Idaho Mountain Express Nov 17 and 24, 2021. 37-23302 was protested by Seneca LLC, Adam Hairston, Wood River Land Trust, Blaine County Land Use & Building Services, Casperson Family Revocable Trust, and the Idaho Department of Fish & Game. In February 2022, Mary Condon (WSB Coordinator) told Wendy Pabich (Blaine County) that WSB staff would advertise rental application 2212 prior to finalizing review due to the protested filing 37-23302 associated with the same rental place of use storage ponds.

Application for permit 37-23302 requests 2.4 af for aesthetic/recreation/wildlife storage in two ponds known as Pond #1 and Pond #3. Mr. Mitchell has a total of 4 ponds on his properties; three lined ponds (Pond #1, Pond #2, and Pond #3) and one "siltation pond" that is not lined. *Enforcement Field Report* at 4. Mr. Mitchell has three irrigation water rights from the EFWR (37-539H, 37-539I, and 37-539L) authorizing a total of 0.98 cfs for irrigation of 26.1 acres. Water diverted from the EFWR under these three water rights is diverted into the siltation pond, Pond #1, Pond #2, and Pond #3. *Enforcement Field Report* at 4-5. Pond #2 can also be filled with water from two different domestic wells owned by Mr. Mitchell. *Enforcement Field Report* at 5. Pond #2 is used to irrigate roughly 5.3 acres. *Enforcement Field Report* at 5. The Enforcement Field Report concluded there is no water right authorization for Pond #1 or Pond #3 and that

---

[1] The BWRGWMA Moratorium Area was designated via order issued May 17, 2022. Prior to the May 17, 2022 order, since 1991 diversions within the BWRGWMA were subject to the 1991 management policy, which also required mitigation for new consumptive water uses in this area.

since Pond #2 holds water for irrigation use, Pond #2 may not require water right authorization under IDWR Administrative Application Processing Memo No. 73 "24-Hour Rule" policy. *Enforcement Field Report* at 7. IDWR sent Mr. Mitchell a letter on October 23, 2020, requesting Mr. Mitchell acquire water right authorization for Pond #1 and Pond #3. Permit application 37-23302 and this rental seek that authorization.

Zach Latham of Brockway Engineering PLLC and Fritz Haemmerle of Haemmerle Law PLLC called Mary Condon (WSB Coordinator) to request water right 37-387C be used for the original rental application received in 2021. 37-387C is limited to a maximum diversion rate of 6.36 cfs and a maximum diversion volume of 1637.2 acre-feet per year when used in combination with water right 37-8330. 37-8330 authorizes non-consumptive wildlife use of 6.36 cfs and 1637.2 acre-feet per year. David Sheridan is the owner of record of 37-8330 while Thunder Meadows Owners Assn Inc is the owner of record of 37-387C. No portion of 37-8330 is included in a WSB lease. Therefore, the owner may still divert the entirety of 37-8330, which would leave no water available to idle under leased water right 37-387C. Therefore, right 37-387C will not be used to fulfill Mr. Mitchell's rental request.

Previously rights 37-387D and 37-22763 were investigated as potential candidates to fulfill this rental application. The previous review for the rental application found that right 37-387D may have been irrigated or benefiting from some amount of subirrigation with the close proximity of the leased land to the EFWR. 2021 and 2019 (September) imagery indicated portions of the leased land under water right 37-22763 may have been irrigated. The issues previously observed in the lease of right 37-22763 have been addressed in the current lease review for Contract 1818.

Water right 37-22763 was chosen to fill this rental due to the facts; the leased land appears it has not been irrigated during the term of the lease, the leased land is across the street from the rental place of use, and the leased point of diversion is in close proximity to the rental point of diversion. Lease contract 1818, for 2024-2028 has been signed by the water right owner and the right will be available for rent for a 5-year term. Although the lessor was not a protestant to permit 37-23302, it remains likely that, if approved, IDWR could receive feedback regarding the proposed rental agreement from Diamond K Revocable Trust (lessor for contract 1818).

AUTHORITY TO FILE: Fritz Haemmerle requested that rental application 2212, on hold since 2022, be revisited and fulfilled if possible. Mr. Mitchell (applicant) signed rental application 2212 (processed as 2957 for 2024 WSB). Mr. Mitchell listed Zach Latham of Brockway Engineering PLLC as an authorized representative. Fritz Haemmerle is the attorney representing Mr. Mitchell for 37-23302, but Mr. Mitchell did not specifically list Fritz Haemmerle as his attorney for rental application 2957. However, since Mr. Haemmerle and Mr. Latham called Mary Condon (WSB Coordinator) to request water right 37-387C be used for rental application 2212, Mr. Haemmerle was entered into the WSB database as a representative. Per 2022 parcel information, the rental place of use for Pond #1 is owned by Mitchell Family Properties LLC (Pond #1) and Robert L Mitchell Trust (Pond #3). Per the Idaho Secretary of State's business search, Mr. Mitchell is a registered agent of Mitchell Family Properties LLC. Per the 2022 parcel information, Mr. Mitchell is a trustee of Robert L Mitchell Trust. The rental point of diversion is the existing diversion for Mr. Mitchell's water rights 37-539H, 37-539I, and 37-539L. Per 37-23302's form, this point of diversion is on land owned by Hyndman Peak Homeowners Association ("HOA") and Mr. Mitchell is a member of the HOA proposing to use the existing diversion.

WATER RIGHT VALIDITY: Lease contract 2848 executed in March 2024, leased water right 37-227632 into the WSB from 2024-2028. Water right 37-22760 The parent of this right was

decreed in 2011. Transfer 78065 authorized the current POD about 330 yds downstream of the rental POD. The water right was diverted from the new POD until being accepted into the WSB in 2016. The entire right has been leased into the WSB from 2016-2023. The only other right within the leased POU is the applicant's domestic right 37-14271. A review of aerial imagery does not indicate that the entire leased POU has been idle since 2016. The applicant stated on section 4.C. of the lease application that no other rights are used for irrigation within the leased POU. During review of the lease application, I called the inquiring why many cleared areas of the POU appear to be irrigated. The lessor explained that they do not use any surface water and the only irrigation in the parcel is diverted using domestic right 37-14271 (ground water) for approximately 1/2-acre strictly in the yard and trees around the house is watered. There is no irrigation of the riparian and treed areas on the property, but there is some subirrigation through most of the summer that keeps the cleared areas green. For the current lease POU the shape is comprised of the riparian and tree covered areas. The landscaping around the home and areas of possible subirrigation were excluded from the lease POU. Aerial imagery from 2016 thru 2021 indicates the leased portion of the property has been idled. During the lease review the Watermaster stated there does not appear to have been any water diverted at the lease POD, but noted there were some conflicting records in 2018.

INJURY TO OTHER WATER RIGHTS: Leased water right 37-22763's point of diversion is approximately 330 yds downstream of the rental point of diversion. The rental place of use is across the street from the leased land being idled. Water right 37-22763 has an 1884 priority date. Per priority cut records for delivery of water rights in basin 37, water rights are generally curtailed to 1884 priority or senior water rights in late-July. The rental application does not state a desired diversion rate, only a desired volume of 1.7 acre-feet. The nature of use change proposed via this rental requires rental of a minimum of one acre (see Enlargement of Use section for details) of water right 37-22763. The rate associated with rental of one acre of water right 37-22763 is 0.04 cfs (1 ac/2.1 ac x 0.08 cfs). It would take ~ 26 days to fill 1.7 acre-feet at the rental rate of 0.04 cfs. The rental application proposes a year-round season of use for the storage use. The rental application does not include a proposed diversion rate or period of time when diversion to the storage ponds is desired. However, to avoid injury to other water right users on the EFWR and other connected water sources, diversion to storage under this rental should be limited to the historic season of use for the leased water right (4/15 to 10/31). The irrigation season for leased water right 37-22763 begins April 15. The fill time of ~26 days does not account for losses in the conveyance system, as those are unknown. The Enforcement Field Report indicates conveyance from the proposed rental point of diversion on the EFWR includes sections of pipe and sections of open ditch. *Enforcement Field Report* at 6-7.

Water District 34 watermaster comments for 37-23302 state some concern with the proposed mitigating water right possibly being curtailed early in the irrigation season. The right proposed for mitigation of the evaporative losses for the two ponds is 37-23079. Right 37-23079 has a priority date of 6/3/1884, which is the same priority date as 37-22763, the right proposed for use in this rental.

The rental application is to supply the initial fill volume for existing ponds and the mitigation plan for 37-23302 seeks authorization for continued diversion to the ponds to replace water as it evaporates throughout the irrigation season. Diversion of an 1884 priority water right on the EFWR at the historic point of diversion should not cause injury provided diversion is limited to the authorized rental quantities and diversion occurs only when the 1884 water right is in priority. It is possible water may be available early in the irrigation season to fill the ponds, but water may not be available later in the year to continue diversions to the pond to overcome evaporative losses.

Protested application for permit 37-23302 is also for authorization for portions of the same ponds. Protests to 37-23302 indicate additional diversions from EFWR may impact senior water users. Blaine County Land Use & Building Services protest of 37-23302 filed December 3, 2021 ("Blaine County Protest") goes so far as to say that this proposed water supply bank rental is merely a "...shell-game using a 'paper' water right to divert water where no additional physical water exists to satisfy the right." *Blaine County Protest* at 2. However, the water right proposed for rental (37-22763) is a valid water right and the use authorized by the leased water right has been retired to allow for use under this rental (if approved). Additionally, the Blaine County Protest indicates the use proposed by this rental application is not a "short-term" change or water use. This rental application is proposed for one year and the proposed use is described as the "first fill of the ponds". .

An injury evaluation of the rights within the reach of the upstream POD movement necessary for the proposed rental found 15 irrigation water rights (37-539D,J&K, 37-20379, 37-20380, 37-22754, 37-22768, and 37-22756 to 22762) diverting a combined 1.26 cfs from the East Fork Big Wood River. All rights diverting within the reach have the same priority date of 06/03/1884. USGS Gauge station 13138000-East Fork Big Wood River at Gimlet, ID(see figure A), just downstream of the leased right, near the confluence with the Big Wood River, indicates that a mean discharge 10 cfs or more year-round. There are only 4 intermittent streams which empty into the reach between the lease POD and the streamflow gauging station, which would not likely contribute to flows at the times of lowest mean flow. Supporting that the rental rate of 0.04cfs should have a limited impact on the water availability in East Fork Big Wood River within the reach from the lease POD to the rental POD upstream.

00060, Discharge, cubic feet per second,												
YEAR	Monthly mean in ft3/s (Calculation Period: 2014-03-01 -> 2022-03-31) Period-of-record for statistical calculation restricted by user											
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2014			11	17.1	71.9	92	37.5	14.3	10.6	13	10.9	10.2
2015	9.61	12.4	16.4	24.3	77	118.9	22.7	12.3	11.7	15.5	8.18	8.96
2016	7.78	8.35	14.3	52.6	100.2	156.5	40.6	11.3	13.1	24.8	28.9	15.7
2017	13.7	19	33.4	100	321.9	492.8	204.7	53.8	35.2	34.3	29.3	11.2
2018	9.34	9.23	16	41.6	174.2	207.3	58.3	19.5	12.4	17	15.9	15.4
2019	14.9	12.7	15.4	57.8	115.2	335.5	156	30.3	21.7	22	18.6	16.6
2020	14.2	13.8	15.2	22.8	78.6	87.1	21	5.05	3.71	5.94	7.76	3.8
2021	6.05	6.48	6.79	13.4	42.2	80.1	8.48	8.44	2.08	5.81	6.64	3.65
2022	5.57	7.5	11.7									
Mean of monthly Discharge	10	11	16	41	123	196	69	19	14	17	16	11
** No Incomplete data have been used for statistical calculation												

Figure A- USGS Gauge station 13138000-East Fork Big Wood River at Gimlet, ID. Mean monthly flows for 9 years.

ENLARGEMENT OF USE: The rental application proposes to use the water for recreation storage. The leased water right 37-22763 authorizes irrigation of 2.1 acres at a rate of 0.08 cfs with no diversion volume stated on the water right. The consumptive use standard for the general rental area is 2.5 afa/acre. This generalized standard is based on growing alfalfa. However, the historic consumptive use volume from April 15 to Oct 31 based on ETIdaho precipitation deficit values at the Ketchum RS station of 1.8 afa/ac proposed for this rental more accurately reflects the consumptive use associated with growing alfalfa (less frequent cuttings) from diversions at the lease point of diversion. Given specific historical crop data is not available for the leased water right, the rental nature of use change analysis assumes one of the more consumptive crops grown in the EFWR region was grown with diversions under the leased

water right. Given that the leased land was at one time part of a bigger farm and most farms in Idaho have alfalfa in the crop rotation, it is not unreasonable to assume alfalfa was historically grown with diversion of the leased water right. The rental should be limited to 0.04 cfs and 1.8 acre-feet. The renter requested only 1.7 acre-feet, but there is some margin for error in calculating the ponds capacity so the rental should authorize use of the full 1.8 acre-feet resulting from the nature of use change analysis.

LOCAL PUBLIC INTEREST: 37-23302 is currently protested by six different parties. Protests site various concerns regarding diversion from the EFWR for the ponds including:

- EFWR flows are very low during drought years (as low as 2 cfs March 11 and September 9, 2021, for example) and additional diversions may impact fish habitat (water quantity and temperature).
- Previous unauthorized diversions to the ponds allegedly caused de-watering of EFWR resulting in a fish kill event in 2020.
- 37-23302 (and this rental application) requests aesthetic/recreation/wildlife storage use, but the ponds are for stockwater. There are barbed wire fences around ponds restricting access to the ponds by wildlife.
- 37-23302 (and this rental application) does not state what wildlife will benefit from the storage use nor what management actions are proposed to promote wildlife habitat.
- Activities, including water use among other things, conflict with the subdivision's CC&Rs.

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

DEPARTMENT STAFF OR WATERMASTER COMMENTS: The location of the rental point of diversion is subject to Water District 37. Comment requests were emailed to the Water District 37 watermaster and IDWR's Southern Region manager On April 5, 2024. Also, a comment request email will be sent to IDWR's enforcement group since this rental was filed in response to an enforcement action. Comments were received from the Water Master on April 19, 2024, stating that the rental does not appear in public interest yet as it seems dependent on the applicant's permit approval as water would not be available later in the season for maintenance due to evaporation loss. The application describes no actions taken by the applicant, was any changes noted by the Watermaster to address the other issues for the associated permit protests including the conflict with the subdivision's CC & Rs and fencing surrounding the ponds restricting wildlife access. However, the current application would only be for the initial fill of the ponds. The diversion rate and volume for the proposed rental are in line with the Watermaster's suggestions, and the rental does not appear to negatively affect the public water use or impact other public water use, if properly administered (as per 42-203B-Definition of Local Public Interest).

Howe, Bob

From: Howe, Bob
Sent: Tuesday, April 23, 2024 1:49 PM
To: zach.latham@brockwayeng.com
Subject: FW: Water Supply Bank-Rental Agreement 842 Mailed for signature
Attachments: Rental Agreement 842-Mitchell, Robert .pdf; Rental 842 Map.pdf; Rental Agreement Cover letter 90%-10%.pdf

Zach,
Please find the attached cover letter for rental agreement #842.
Feel free to reach out with any questions or concerns.

Bob Howe

IDAHO DEPARTMENT OF
WATER RESOURCES
Bob Howe | Water Resource Agent
322 E Front St, PO Box 83720, Boise, ID 83720
(208) 287-4800 | www.idwr.idaho.gov

From: Howe, Bob
Sent: Tuesday, April 23, 2024 1:29 PM
To: zach.latham@brockwayeng.com
Cc: Bank <Bank@idwr.idaho.gov>
Subject: Water Supply Bank-Rental Agreement 842 Mailed for signature

Good Afternoon Zach,

The Rental Agreement for Robert Mitchell will be submitted for mailing in the morning. A copy of proposed rental agreement #842 for a 2-year term (2024-2025), and the rental map are attached for your files.

Please advise your client that the signed rental agreement with payment payment for the 2024 season should be returned to IDWR within 14 days of the mailing date. Feel free to reach out to us with any questions or concerns.

Best Regards,

Bob Howe

IDAHO DEPARTMENT OF
WATER RESOURCES
Bob Howe | Water Resource Agent
322 E Front St, PO Box 83720, Boise, ID 83720
(208) 287-4800 | www.idwr.idaho.gov

AFFIDAVIT of PUBLICATION

RECEIVED
AUG 01 2022
DEPARTMENT OF WATER RESOURCES

State of Idaho
County of Blaine

Pam Morris, being the first duly sworn, deposes and says that she is the printer (publisher) of the Idaho Mountain Express, a newspaper published every week in Ketchum, County of Blaine, State of Idaho; that said newspaper has been continuously and uninterruptedly published for a period of seventy-eight consecutive weeks prior the first publication of the annexed notice, and is a newspaper qualified to publish legal notices as provided by act of the 1919 session of the legislature of the State of Idaho, known as House Bill 145; that the annexed advertisement was published once

each week for 2 consecutive issues in said newspaper proper and not in a supplement; that the date of the first publication of said advertisement was on the 20 day of July, 2022, and the date of the last publication was on the 27 day of July, 2022

Pam Morris

Subscribed and sworn to before me this 27 day of July, 2022.

Connie N Johnson
NOTARY PUBLIC

CONNIE N. JOHNSON
NOTARY PUBLIC
Comm. No. 12378
STATE OF IDAHO

RESIDING AT HAILEY, IDAHO
MY COMMISSION EXPIRES ON 7/10/2024

IDAHO MOUNTAIN EXPRESS
P.O. Box 1013
Ketchum, Idaho 83340

COST OF PUBLICATION

Number of Picas per Line 11.5

Number of Lines in Notice 33

Number of Insertions 2

____	Lines tabular at	____	9.0 cents/pica
33	Lines straight at	$30.36	8.0 cents/pica
33	Subsequent lines at	$26.57	7.0 cents/pica
	TOTAL COST	$56.93	

COPY OF NOTICE

Legal Notice
TITLE OF NOTICE

PLAINTIFF ATTORNEY

DEFENDANT

PLAINTIFF

IDWR/Boise
BILL TO

NOTICE OF PROPOSED RENTAL FROM WATER SUPPLY BANK

Notice is hereby given pursuant to IDAPA Rule 37.02.03.030.02 (Water Supply Bank Rule 30.02) that Robert Mitchell, 10620 Bershire Dr, Los Altos CA, 94024 filed an application on December 3, 2021 (Water Supply Bank Rental Application No. 2212), to rent water from the Water Supply Bank for up to five years. The proposed rental in Blaine County would provide for the use of 0.03 cfs and 1.8 acre-feet of water under leased water right 37-22760 from the East Fork Wood River for the initial filling of two recreation storage ponds.

Comments may be submitted based on the criteria of Section 42-1763, Idaho Code. Comments should be filed in writing to the Idaho Department of Water Resources, PO Box 83720, Boise, ID 83720-0098, or emailed to Bank@idwr.idaho.gov on or before August 8, 2022. For more information, visit www.idwr.idaho.gov/water-supply-bank.

Gary Spackman, Director

PUBLISH
IDAHO MOUNTAIN EXPRESS
JULY 20 & 27, 2022

OK
8-3-22

NOTICE OF PROPOSED RENTAL FROM WATER SUPPLY BANK

Notice is hereby given pursuant to IDAPA Rule 37.02.03.030.02 (Water Supply Bank Rule 30.02) that Robert Mitchell, 10620 Bershire Dr, Los Altos CA, 94024 filed an application on December 3, 2021 (Water Supply Bank Rental Application No. 2212), to rent water from the Water Supply Bank for up to five years. The proposed rental in Blaine County would provide for the use of 0.03 cfs and 1.8 acre-feet of water under leased water right 37-22760 from the East Fork Wood River for the initial filling of two recreation storage ponds.

Comments may be submitted based on the criteria of Section 42-1763, Idaho Code. Comments should be filed in writing to the Idaho Department of Water Resources, PO Box 83720, Boise, ID 83720-0098, or emailed to Bank@idwr.idaho.gov on or before August 8, 2022. For more information, visit www.idwr.idaho.gov/water-supply-bank.

Gary Spackman, Director

Published July 20 and 27, 2022

Veibell, Amanda

From: Palmer, Cherie
Sent: Friday, July 22, 2022 1:28 PM
To: Veibell, Amanda
Subject: RE: Water Supply Bank Rental Application 2212

Hi Amanda,
I don't have any comments at this time. Thank you.
Cherie

From: Veibell, Amanda <Amanda.Veibell@idwr.idaho.gov>
Sent: Friday, July 15, 2022 9:59 AM
To: Palmer, Cherie <Cherie.Palmer@idwr.idaho.gov>
Cc: Bank <Bank@idwr.idaho.gov>; Zach Latham <zach.latham@brockwayeng.com>
Subject: Water Supply Bank Rental Application 2212

Dear Interested Party:

The Department of Water Resources is notifying you of water supply bank rental application that may be of interest to you. The water supply bank rental application is being advertised in the Idaho Mountain Express on July 20, 2022 and July 27, 2022. An electronic copy of the application is available here

If you desire to submit a comment based on the criteria of Section 42-1763 Idaho Code, comments should be filed in writing to the Idaho Dept by August 8, 2022.

Please contact a representative in the bank at 208-287-4800 or bank@idwr.idaho.gov if you have any questions regarding the application.

Amanda Johnson-Veibell
Technical Records Specialist I
IDAHO DEPARTMENT OF WATER RESOURCES
PO Box 83720 Boise ID 83720-0098
208-287-4945

Veibell, Amanda

From: Veibell, Amanda
Sent: Friday, July 15, 2022 9:59 AM
To: Palmer, Cherie
Cc: Bank; Zach Latham
Subject: Water Supply Bank Rental Application 2212

Dear Interested Party:

The Department of Water Resources is notifying you of water supply bank rental application that may be of interest to you. The water supply bank rental application is being advertised in the Idaho Mountain Express on July 20, 2022 and July 27, 2022. An electronic copy of the application is available here

If you desire to submit a comment based on the criteria of Section 42-1763 Idaho Code, comments should be filed in writing to the Idaho Dept by August 8, 2022.

Please contact a representative in the bank at 208-287-4800 or bank@idwr.idaho.gov if you have any questions regarding the application.

Amanda Johnson-Veibell
Technical Records Specialist I



IDAHO DEPARTMENT OF
WATER RESOURCES
PO Box 83720 Boise ID 83720-0098
208-287-4945

Veibell, Amanda

From: Veibell, Amanda
Sent: Friday, July 15, 2022 11:35 AM
To: White,Craig
Cc: Bank; Zach Latham
Subject: Water Supply Bank Rental Application 2212

Dear Interested Party:

The Department of Water Resources is notifying you of water supply bank rental application that may be of interest to you. The water supply bank rental application is being advertised in the Idaho Mountain Express on July 20, 2022 and July 27, 2022. An electronic copy of the application is available here

If you desire to submit a comment based on the criteria of Section 42-1763 Idaho Code, comments should be filed in writing to the Idaho Dept by August 8, 2022.

Please contact a representative in the bank at 208-287-4800 or bank@idwr.idaho.gov if you have any questions regarding the application.

Amanda Johnson-Veibell
Technical Records Specialist I
IDAHO DEPARTMENT OF WATER RESOURCES
PO Box 83720 Boise ID 83720-0098
208-287-4945

Veibell, Amanda

From: Veibell, Amanda
Sent: Friday, July 15, 2022 11:33 AM
To: 'craigcasperson1@gmail.com'
Cc: Bank; Zach Latham
Subject: Water Supply Bank Rental Application 2212

Dear Interested Party:

The Department of Water Resources is notifying you of water supply bank rental application that may be of interest to you. The water supply bank rental application is being advertised in the Idaho Mountain Express on July 20, 2022 and July 27, 2022. An electronic copy of the application is available here

If you desire to submit a comment based on the criteria of Section 42-1763 Idaho Code, comments should be filed in writing to the Idaho Dept by August 8, 2022.

Please contact a representative in the bank at 208-287-4800 or bank@idwr.idaho.gov if you have any questions regarding the application.

Amanda Johnson-Veibell
Technical Records Specialist I

IDAHO DEPARTMENT OF
WATER RESOURCES
PO Box 83720 Boise ID 83720-0098
208-287-4945

Veibell, Amanda

From: Veibell, Amanda
Sent: Friday, July 15, 2022 11:06 AM
To: 'wpabich@co.blaine.id.us'; 'tgraves@co.blaine.id.us'
Cc: Bank; Zach Latham
Subject: Water Supply Bank Rental Application 2212

Dear Interested Party:

The Department of Water Resources is notifying you of water supply bank rental application that may be of interest to you. The water supply bank rental application is being advertised in the Idaho Mountain Express on July 20, 2022 and July 27, 2022. An electronic copy of the application is available here

If you desire to submit a comment based on the criteria of Section 42-1763 Idaho Code, comments should be filed in writing to the Idaho Dept by August 8, 2022.

Please contact a representative in the bank at 208-287-4800 or bank@idwr.idaho.gov if you have any questions regarding the application.

Amanda Johnson-Veibell
Technical Records Specialist I

IDAHO DEPARTMENT OF WATER RESOURCES
PO Box 83720 Boise ID 83720-0098
208-287-4945

Veibell, Amanda

From: Veibell, Amanda
Sent: Friday, July 15, 2022 10:54 AM
To: 'rsanto@woodriverlandtrust.org'
Cc: Bank; Zach Latham
Subject: Water Supply Bank Rental Application 2212

Dear Interested Party:

The Department of Water Resources is notifying you of water supply bank rental application that may be of interest to you. The water supply bank rental application is being advertised in the Idaho Mountain Express on July 20, 2022 and July 27, 2022. An electronic copy of the application is available here

If you desire to submit a comment based on the criteria of Section 42-1763 Idaho Code, comments should be filed in writing to the Idaho Dept by August 8, 2022.

Please contact a representative in the bank at 208-287-4800 or bank@idwr.idaho.gov if you have any questions regarding the application.

Amanda Johnson-Veibell
Technical Records Specialist I
IDAHO DEPARTMENT OF WATER RESOURCES
PO Box 83720 Boise ID 83720-0098
208-287-4945

Veibell, Amanda

From: Veibell, Amanda
Sent: Friday, July 15, 2022 10:49 AM
To: 'adamh@aspenpllc.com'
Cc: Bank; Zach Latham
Subject: Water Supply Bank Rental Application 2212

Dear Interested Party:

The Department of Water Resources is notifying you of water supply bank rental application that may be of interest to you. The water supply bank rental application is being advertised in the Idaho Mountain Express on July 20, 2022 and July 27, 2022. An electronic copy of the application is available here

If you desire to submit a comment based on the criteria of Section 42-1763 Idaho Code, comments should be filed in writing to the Idaho Dept by August 8, 2022.

Please contact a representative in the bank at 208-287-4800 or bank@idwr.idaho.gov if you have any questions regarding the application.

Amanda Johnson-Veibell
Technical Records Specialist I

IDAHO DEPARTMENT OF WATER RESOURCES
PO Box 83720 Boise ID 83720-0098
208-287-4945

Veibell, Amanda

From: Veibell, Amanda
Sent: Friday, July 15, 2022 10:46 AM
To: david@davidconcannon.com
Cc: Bank; Zach Latham
Subject: Water Supply Bank Rental Application 2212

Dear Interested Party:

The Department of Water Resources is notifying you of water supply bank rental application that may be of interest to you. The water supply bank rental application is being advertised in the Idaho Mountain Express on July 20, 2022 and July 27, 2022. An electronic copy of the application is available here

If you desire to submit a comment based on the criteria of Section 42-1763 Idaho Code, comments should be filed in writing to the Idaho Dept by August 8, 2022.

Please contact a representative in the bank at 208-287-4800 or bank@idwr.idaho.gov if you have any questions regarding the application.

Amanda Johnson-Veibell
Technical Records Specialist I

IDAHO DEPARTMENT OF
WATER RESOURCES
PO Box 83720 Boise ID 83720-0098
208-287-4945

Veibell, Amanda

From:	Veibell, Amanda
Sent:	Friday, July 15, 2022 8:40 AM
To:	watermanager@wd37.org
Cc:	Bank
Subject:	Water Supply Bank Rental Application 2212
Attachments:	Watermaster comments RENTAL.docx

Dear Watermaster:

The Idaho Department of Water Resources (IDWR) is seeking written comment and/or recommendation from you regarding the above-referenced water supply bank rental application. You can find a copy of the application here. Please review the rental application, then complete the enclosed recommendation form and return it to this office within 21 days of the date of this letter.

If the rental application is approved, IDWR will include appropriate standard conditions of approval for a water supply bank rental located within a water district, such as regulation by the watermaster, lockable controlling works, and/or measuring devices. Any special conditions or other concerns you have related to this application should be specifically addressed in your recommendation.

IDWR can finish reviewing an unprotested application as soon as the comment period has past. Your prompt response to this request will ensure that your recommendation can be considered. If IDWR has not received your written recommendation within 21 days from the date of this letter, IDWR will presume that you do not oppose approval of the application and that you have no comments for IDWR to consider.

Sincerely,

Amanda Johnson-Veibell
Technical Records Specialist I
IDAHO DEPARTMENT OF WATER RESOURCES
PO Box 83720 Boise ID 83720-0098
208-287-4945

State of Idaho
Department of Water Resources
RECOMMENDATION FORM

RE: Water Supply Bank Rental Application 2212 Using Water Right 37-22760

Rental Applicant's Name: ROBERT MITCHELL
10620 BERKSHIRE DR
LOS ALTOS, CA 94024-6555

Watermaster's Recommendation:

a) _____ I do not oppose approval of this rental.

b) _____ I do not oppose approval of this rental if it is conditioned as follows:

c) _____ I oppose approval of this rental for the following reasons:

d) _____ Additional comments:

Dated this _____ day of _____. ____

_____
Watermaster's Signature

Veibell, Amanda

From: Veibell, Amanda
Sent: Thursday, July 14, 2022 2:03 PM
To: 'legalnotices@mtexpress.com'
Cc: Bank
Subject: Legal notice to publish WSB Rental 2212
Attachments: Mitchell Rental Legal Notice.doc

Good Afternoon.

Please publish the enclosed legal notice on the dates indicated (once a week for two consecutive weekly issues). If you cannot publish the notice on the proposed dates, please contact us immediately.

An affidavit of publication must be submitted to the Department along with the publication bill. Please send the affidavit and bill to this office before 8/8/2022. Your cooperation is appreciated.

Amanda Johnson-Veibell
Technical Records Specialist I
IDAHO DEPARTMENT OF WATER RESOURCES
PO Box 83720 Boise ID 83720-0098
208-287-4945

MEMORANDUM FOR AGREEMENT # 637

To: Water Right(s) 37-22760

From: Angie Hansen

Date: July 7, 2022

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

---

PURPOSE/NARRATIVE: Water Supply Bank ("WSB") rental application 2212 is proposing to rent water right 37-22760 to supply the initial fill volume for two recreational storage ponds proposed under pending water right permit application no. 37-23302 ("37-23302"). 37-23302 proposes diversion of 0.98 cfs from the East Fork Wood River ("EFWR") for aesthetic/recreation/wildlife storage of 2.4 acre-feet per year to fill and maintain two lined ponds, known as Pond #1 and Pond #3, with a total capacity of 1.7 acre-feet and total annual evaporation of 0.7 acre-feet. 37-23302 requires mitigation, because the diversion and proposed uses are within the Big Wood River Ground Water Management Area ("BWRGRMA") Moratorium Area[1]. 37-23302's form states the consumptive use associated with this storage pond will be mitigated by retiring 0.5 acres of irrigation authorized by water right 37-20379. 37-23302 included a sales agreement with draft quitclaim deed to convey ownership of the 0.5 ac portion of 37-20379 to Robert Mitchell (applicant) upon IDWR approval of the mitigation plan. This rental application is for the "one-time fill" authorization to mitigate for diverting water to fill the ponds' capacity. Mr. Mitchell filed the permit and rental applications in response to IDWR Enforcement Action E2020-1462 alleging Mr. Mitchell's diversions to fill ponds contributed to de-watering of the EFWR on September 8, 2020. The enforcement action field investigation is summarized in the Enforcement Action E2020-1642 October 15, 2020 Field Investigation Report ("Enforcement Field Report").

IDWR's Southern Region office advertised 37-23302 in the Idaho Mountain Express Nov 17 and 24, 2021. 37-23302 was protested by Seneca LLC, Adam Hairston, Wood River Land Trust, Blaine County Land Use & Building Services, Casperson Family Revocable Trust, and the Idaho Department of Fish & Game. In February 2022, Mary Condon (WSB Coordinator) told Wendy Pabich (Blaine County) that WSB staff would advertise rental application 2212 prior to finalizing review due to the protested filing 37-23302 associated with the same rental place of use storage ponds.

Application for permit 37-23302 requests 2.4 af for aesthetic/recreation/wildlife storage in two ponds known as Pond #1 and Pond #3. Mr. Mitchell has a total of 4 ponds on his properties; three lined ponds (Pond #1, Pond #2, and Pond #3) and one "siltation pond" that is not lined. *Enforcement Field Report* at 4. Mr. Mitchell as three irrigation water rights from the EFWR (37-359H, 37-359I, and 37-359L) authorizing a total of 0.98 cfs for irrigation of 26.1 acres. Water diverted from the EFWR under these three water rights is diverted into the siltation pond, Pond #1, Pond #2, and Pond #3. *Enforcement Field Report* at 4-5. Pond #2 can also be filled with water from two different domestic wells owned by Mr. Mitchell. *Enforcement Field Report* at 5. Pond #2 is used to irrigate roughly 5.3 acres. *Enforcement Field Report* at 5. The Enforcement Field Report concluded there is no water right authorization for Pond #1 or Pond #3 and that since Pond #2 holds water for irrigation use, Pond #2 may not require water right authorization

---

[1] The BWRGWMA Moratorium Area was designated via order issued May 17, 2022. Prior to the May 17, 2022 order, since 1991 diversions within the BWRGWMA were subject to the 1991 management policy, which also required mitigation for new consumptive water uses in this area.

Superseded

under IDWR Administrative Application Processing Memo No. 73 "24-Hour Rule" policy. *Enforcement Field Report* at 7. IDWR sent Mr. Mitchell a letter on October 23, 2020 requesting Mr. Mitchell acquire water right authorization for Pond #1 and Pond #3. Permit application 37-23302 and this rental seek that authorization.

Zach Latham of Brockway Engineering PLLC and Fritz Haemmerle of Haemmerle Law PLLC called Mary Condon (WSB Coordinator) to request water right 37-387C be used for this rental application. 37-387C is limited to a maximum diversion rate of 6.36 cfs and a maximum diversion volume of 1637.2 acre-feet per year when used in combination with water right 37-8330. 37-8330 authorizes non-consumptive wildlife use of 6.36 cfs and 1637.2 acre-feet per year. David Sheridan is the owner of record of 37-8330 while Thunder Meadows Owners Assn Inc is the owner of record of 37-387C. No portion of 37-8330 is included in a WSB lease. Therefore, the owner may still divert the entirety of 37-8330, which would leave no water available to idle under leased water right 37-387C. Therefore, right 37-387C will not be used to fulfill Mr. Mitchell's rental request.

Two other water rights were investigated as potential candidates to fulfill this rental application; 37-387D and 37-22763. 2017 (August) and 2019 (September) imagery indicates the leased land under water right 37-387D may have been irrigated or is benefiting from some amount of subirrigation with the lands close proximity to the EFWR. 2021 and 2019 (September) imagery indicates portions of the leased land under water right 37-22763 may have been irrigated. It is problematic to determine the amount of historic use being given up to provide the needed water for this rental under those circumstances.

Water right 37-22760 was chosen to fill this rental due to the facts; the leased land appears it has not been irrigated during the term of the lease, the leased land is across the street from the rental place of use, and the leased point of diversion is the same location as the rental point of diversion. On the 2022 lease application, the lessor proposed a rental rate of $850 per acre-foot. However, there was no specific rental agreement proposed at the time of the lease and the lessor signed the lease contract accepting rental at the "Current Rental Rate", which is $20 per acre-foot. The rental agreement for this application proposes rental at a rate of $20 per acre-foot. Water right 37-22760 is only leased for 2022, therefore the rental term for this application will only be one year rather than the five requested. No other water rights leased for the entire five year period were identified as available to fill this rental request. Halbert D Lindquist Revocable Trust ("HDLR Trust") is the owner of record of 37-22760. HDLR Trust is also a protestant of 37-23302. When this rental application is advertised, IDWR will likely receive feedback regarding the proposed rental agreement from HDLR Trust.

AUTHORITY TO FILE: Mr. Mitchell (applicant) signed rental application 2212. Mr. Mitchell listed Zach Latham of Brockway Engineering PLLC as an authorized representative. Fritz Haemmerle is the attorney representing Mr. Mitchell for 37-23302, but Mr. Mitchell did not specifically list Fritz Haemmerle as his attorney for rental application 2212. However, since Mr. Haemmerle and Mr. Latham called Mary Condon (WSB Coordinator) to request water right 37-387C be used for rental application 2212, Mr. Haemmerle was entered into the WSB database as a representative. Per 2022 parcel information, the rental place of use for Pond #1 is owned by Mitchell Family Properties LLC (Pond #1) and Robert L Mitchell Trust (Pond #3). Per the Idaho Secretary of State's business search, Mr. Mitchell is a registered agent of Mitchell Family Properties LLC. Per the 2022 parcel information, Mr. Mitchell is a trustee of Robert L Mitchell Trust. The rental point of diversion is the existing diversion for Mr. Mitchell's water rights 37-539H, 37-539I, and 37-539L. Per 37-23302's form, this point of diversion is on land owned by Hyndman Peak Homeowners Association ("HOA") and Mr. Mitchell is a member of the HOA proposing to use the existing diversion.

WATER RIGHT VALIDITY: Lease contract 1496 executed February 11, 2022, leased 1.8 acre portion of water right 37-22760 into the WSB for 2022. Water right 37-22760 is a split portion of parent water right 37-539G. On June 29, 2011, the Snake River Basin Adjudication ("SRBA") Court issued a partial decree for water right 37-539G. 37-22760 was split by ownership change from 37-539G in 2012. From 2016 thru 2022 the 1.8 acre-portion of water right 37-22760 has been leased in the WSB. There are no concerns regarding validity of the 1.8 acre-portion of water right 37-22760 leased into the WSB. Aerial imagery from 2016 thru 2021 indicates the leased land has been idled.

INJURY TO OTHER WATER RIGHTS: Leased water right 37-22760's point of diversion is at the same location as the rental point of diversion. The rental place of use is across the street from the leased land being idled. Water right 37-22760 has an 1884 priority date. Per priority cut records for delivery of water rights in basin 37, water rights are generally curtailed to 1884 priority or senior water rights in late-July. The rental application does not state a desired diversion rate, only a desired volume of 1.7 acre-feet. The nature of use change proposed via this rental requires rental of a minimum of one acre (see Enlargement of Use section for details) of water right 37-22760. The rate associated with rental of one acre of water right 37-22760 is 0.03 cfs (1 ac/1.8 ac x 0.06 cfs). It would take ~ 29 days to fill 1.7 acre-feet at the rental rate of 0.03 cfs. The rental application proposes a year-round season of use for the storage use. The rental application does not include a proposed diversion rate or period of time when diversion to the storage ponds is desired. However, to avoid injury to other water right users on the EFWR and other connected water sources, diversion to storage under this rental should be limited to the historic season of use for the leased water right (4/15 to 10/31). The irrigation season for leased water right 37-22760 begins April 15. The fill time of ~29 days does not account for losses in the conveyance system, as those are unknown. The Enforcement Field Report indicates conveyance from the proposed rental point of diversion on the EFWR includes sections of pipe and sections of open ditch. *Enforcement Field Report* at 6-7.

Water District 34 watermaster comments for 37-23302 state some concern with the proposed mitigating water right possibly being curtailed early in the irrigation season. The right proposed for mitigation of the evaporative losses for the two ponds is 37-23079. Right 37-23079 has a priority date of 6/3/1884, which is the same priority date as 37-22760, the right proposed for use in this rental.

The rental application is to supply the initial fill volume for existing ponds and the mitigation plan for 37-23302 seeks authorization for continued diversion to the ponds to replace water as it evaporates throughout the irrigation season. Diversion of an 1884 priority water right on the EFWR at the historic point of diversion should not cause injury provided diversion is limited to the authorized rental quantities and diversion occurs only when the 1884 water right is in priority. It is possible water may be available early in the irrigation season to fill the ponds, but water may not be available later in the year to continue diversions to the pond to overcome evaporative losses.

Protested application for permit 37-23302 is also for authorization for portions of the same ponds. Protests to 37-23302 indicate additional diversions from EFWR may impact senior water users. Blaine County Land Use & Building Services protest of 37-23302 filed December 3, 2021 ("Blaine County Protest") goes so far as to say that this proposed water supply bank rental is merely a "...shell-game using a 'paper' water right to divert water where no additional physical water exists to satisfy the right." *Blaine County Protest* at 2. However, the water right proposed for rental (37-22760) is a valid water right and the use authorized by the leased water right has been retired to allow for use under this rental (if approved). Additionally, the Blaine County

Protest indicates the use proposed by this rental application is not a "short-term" change or water use. This rental application is proposed for five years, however, the proposed use is described as the "first fill of the ponds". The right proposed to fill this rental is currently only leased into the water supply bank for 2022. Therefore, if approved, this rental would be of limited duration and use.

Nevertheless, due to the protests, this rental application will be advertised to afford 37-23302 protestants and others an opportunity to comment on the rental proposal. Any comments received as a result of the rental application publication, evidence brought forward in the contested case of 37-23302, and the priority date deliverable should all be considered before a final decision is issued for this rental application.

ENLARGEMENT OF USE: The rental application proposes to use the water for recreation storage. The leased portion of water right 37-22760 authorizes irrigation of 1.8 acres at a rate of 0.06 cfs with no diversion volume stated on the water right. The consumptive use standard for the general rental area is 2.5 afa/acre. This generalized standard is based on growing alfalfa. However, the historic consumptive use volume from April 15 to Oct 31 based on ETIdaho precipitation deficit values at the Ketchum RS station of 1.8 afa/ac proposed for this rental more accurately reflects the consumptive use associated with growing alfalfa (less frequent cuttings) from diversions at the lease point of diversion. Give specific historical crop data is not available for the leased water right, the rental nature of use change analysis assumes one of the more consumptive crops grown in the EFWR region was grown with diversions under the leased water right. Given that the leased land was at one time part of a bigger farm and most farms in Idaho have alfalfa in the crop rotation, it is not unreasonable to assume alfalfa was historically grown with diversion of the leased water right. The rental should be limited to 0.03 cfs and 1.8 acre-feet. The renter requested only 1.7 acre-feet, but there is some margin for error in calculating the ponds capacity so the rental should authorize use of the full 1.8 acre-feet resulting from the nature of use change analysis.

LOCAL PUBLIC INTEREST: 37-23302 is currently protested by six different parties. Protests site various concerns regarding diversion from the EFWR for the ponds including:

- EFWR flows are very low during drought years (as low as 2 cfs March 11 and September 9, 2021 for example) and additional diversions may impact fish habitat (water quantity and temperature).
- Previous unauthorized diversions to the ponds allegedly caused de-watering of EFWR resulting in a fish kill event in 2020.
- 37-23302 (and this rental application) requests aesthetic/recreation/wildlife storage use, but the ponds are for stockwater. There are barbed wire fences around ponds restricting access to the ponds by wildlife.
- 37-23302 (and this rental application) does not state what wildlife will benefit from the storage use nor what management actions are proposed to promote wildlife habitat.
- Activities, including water use among other things, conflict with the subdivision's CC&Rs.

This rental application will be advertised to seek comments regarding local public interest and other review criteria. Additional review of local public interest will occur after publication of this rental application. Typically, when a protested permit application, such as 37-23302, is associated with a proposed rental water use, the rental will not be approved unless the protestants agree or the protestants concerns are addressed in some other manner.

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

DEPARTMENT STAFF OR WATERMASTER COMMENTS: The location of the rental point of diversion is subject to Water District 37. A comment request email will be sent to the Water District 37 watermaster and IDWR's Southern Region manager when this rental application is published in the newspaper. Also, a comment request email will be sent to IDWR's enforcement group since this rental was filed in response to an enforcement action.

1.7 af / x AC Conv. use standard 2.5 AF/AC

$x \cdot 2.5 = 1.7$

$x = \frac{1.7}{2.5} = 0.7$ ACRES

$\frac{0.7\ AC}{18\ AC} \approx 0.39 \times 0.06\ cfs = 0.02\ cfs$

$\# \times 0.02\ cfs \times 1.9835 = 1.7\ AF$

$\# = \frac{1.7\ AF}{(0.02\ cfs \times 1.9835)} = \frac{1.7\ AF}{0.03967} \approx 43$ DAYS

ET Idaho precip def 1.8 AF/AC

Rent 1 acre.

$\frac{1\ AC}{1.8\ AC} \approx 0.55 \times 0.06\ cfs = 0.03\ cfs$

$\# \times 0.03\ cfs \times 1.9835 = 1.7\ AF$ fill

$\# = \frac{1.7\ AF}{0.03 \times 1.9835} = \frac{1.8}{0.059505} = 30$ DAYS 29

0.94 AF ↓ 0.73 AF capacity = 1.7 AF

Pond 1 + 3 SA = 0.7 AC

" " " " EVAP = 0.06 AF (0.5 ac 0.02 cfs covered via 37-20379)

ponds lined so no seepage.

1.7 AF + 0.7 AF = 2.4 AF

1.7 af covered via one-time fill rental

0.7 af evap mit via mit plan 37-23302

From: Wendy Pabich
To: Condon, Mary
Cc: Bank
Subject: Re: Protest to Application for Permit 37-23302
Date: Tuesday, February 15, 2022 11:24:10 AM

Hi Mary,

Thank you for this and for ensuring the lease review will be advertised. I'm wondering if you could also provide direct notice to me and to the Blaine County prosecuting attorney? His information is as follows:

Timothy K. Graves

Chief Deputy Prosecuting Attorney

Blaine County Prosecuting Attorney's Office

219 First Avenue South, Suite 201

Hailey ID, 83333

(208) 788-5545

(208) 788-5554 (fax)

tgraves@co.blaine.id.us

I appreciate your insights on our protest. At the time we submitted it, there was no information about which water right the applicant was seeking to lease. We've subsequently seen that.

Thank you for your assistance.

Wendy

Wendy J. Pabich, Ph.D.
President
Water Futures

Water Futures

On Mon, Feb 14, 2022 at 5:31 PM Condon, Mary <Mary.Condon@idwr.idaho.gov> wrote:

Hi Wendy,

Water right lease and rentals from the bank are reviewed by IDWR staff, on behalf of the Director, on behalf of the Board. Creation, duty, acquisition and rentals from the water supply bank can be found in Sections 42-1761 through 42-1766, Idaho Code and the water supply bank rules, IDAPA 37.02.03. Since you have made the public interest known in this application for rental, we can move to have the rental application advertised upon review and prior to finalization. I have looked through the documents you shared, as well as their application for permit and rental application. I would like to clarify some points from the analysis you provided. The renter and his representatives have requested a leased water right for the rental from the East Fork (T04N18E, Section 35) just upstream from the rental POD. (While we do not typically have requests to move water to or from another reach, we can in the form of an exchange, under the provisions of Section 42-240, Idaho Code, so long as there is no apparent injury expected.) Additionally, their application for permit states the applicant has provided mitigation through the purchase of .5 acres from a different water right for irrigation (not from a domestic exemption), and equal to .02 cfs and 1.7 af for evaporative losses. While I have not formally reviewed all of the rental information, I do not see any concerns of injury with the current rental proposal to provide a first fill for ponds.

Again, we will move to have the application advertised when an agent can review it, and I will include your email with the application for rental.

Best,

Mary

Mary Condon

Water Supply Bank Coordinator

IDAHO DEPARTMENT OF
WATER RESOURCES

Planning & Projects

mary.condon@idwr.idaho.gov

Direct: (208) 287-4936

Fax: (208) 287-6700, Attn. Mary C.

From: Wendy Pabich <wendy@waterfuturesinc.com>
Sent: Monday, February 14, 2022 12:43 PM
To: Bank <Bank@idwr.idaho.gov>
Subject: Protest to Application for Permit 37-23302

Hello, Mary,

I'm working with Blaine County as their water advisor and they recently protested Application for Permit 37-23302, which also has a simultaneous request for rental water from the Water Bank. It's my understanding there's no formal process to protest a water lease request? Is that the case? Does the Water Board take public comment when they consider lease requests? And, will they be reviewing this application in a scheduled meeting or will it happen administratively? In the case of the former, could you please notify me when the proceeding is scheduled?

For your reference, attached please find the County's protest and accompanying documents. I look forward to hearing from you with any additional information you can provide.

Thanks very much,

Wendy

Wendy J. Pabich, Ph.D.
President

Water Futures