

STATE OF IDAHO
WATER RESOURCE BOARD

RECEIVED

APR 09 2024

DEPARTMENT OF
WATER RESOURCES

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

Designated Applicant HK Contractors, Inc.

(Select one owner – see item 1A on the application)

Water Right No. 22-207B

(One water right per application)

Is this application being submitted with a rental application as a lease/rental package?

Yes ☒ No ☐

This application must be prepared in accordance with the minimum requirement checklist below. Use this checklist to ensure all necessary documentation has been provided. This checklist is part of the lease application and must be included with the lease application. **Applications that do not meet the minimum requirements will not be processed and may be returned or denied.**

MINIMUM REQUIREMENT CHECKLIST

All items must be checked as either *Attached (Yes)* or *Not Applicable (N/A)*

Yes

Completed *Application to Sell or Lease a Water Right to the Water Supply Bank*.

Application filing fee of \$250.00 per water right. If you are submitting more than one lease application and the water rights have an overlapping, common place of use, or a common diversion rate or volume, the total fee for all water rights is \$500.00. For places of use, multiple water rights must be used to irrigate the same lands in order to qualify for the joint filing fee. Individual filing fees are required for water rights that share a common permissible place of use but which cover separate acres within the permissible place of use.

Confirmation this form has been printed **single sided**, per requirement of the Water Supply Bank.

Attachment N/A Yes

1A

Signatures and contact information for *all owners* of the water right to be leased or sold on this application.

1B

An Internal Revenue Service (IRS) Form W-9 for the Designated Applicant.

1C

*Notice of Change in Water Right Ownership* form (accessible from www.idwr.idaho.gov).

1D



Contact information for an authorized representative and documentary proof they are authorized to represent the Designated Applicant on this application. If the Designated Applicant is a business, partnership, municipality, organization or association, include documents identifying officers authorized to sign or act on behalf of the entity.

2



Description of a water right portion offered to the Water Supply Bank.

3



A map that clearly outlines the specific location where irrigated acres will be dried up, or where a beneficial use of water will be suspended. You have the option of printing a map using the map tool on IDWR's website at: www.idwr.idaho.gov.

4A



Written consent from irrigation district or water delivery company.

4G



Evidence demonstrating the water right has not been forfeited pursuant to Section 42-222(2), Idaho Code.

Department Use Only

Fee Amount \$ 250Received By: KMDate Received: 4.9.24Receipt # C118122W-9 received? Yes ☒ No ☐ (Route W-9 to Fiscal)Name on W-9: H-K Contractors Inc

2972

STATE OF IDAHO
WATER RESOURCE BOARD

APPLICATION TO SELL OR LEASE A WATER RIGHT
(Continued)

1. CONTACT INFORMATION

- A. This application must be completed by a Designated Applicant who is a current owner of the water right being sold or leased to the Water Supply Bank. If there are additional current owners, those individuals must authorize the Designated Applicant to represent them on this application by completing and signing Attachment 1A of this application package.

Designated Applicant HK Contractors, Inc., c/o Jeff Trosper

Mailing Address P.O. Box 51450 Idaho Falls Idaho 83405
Street City State Zip Code

Email Address jefftrosper@hkcontractors.com Phone Number (208) 523-6600

☒ The Designated Applicant is the sole owner of the water right being sold or leased to the Water Supply Bank.

OR

☐ The Designated Applicant is representing additional water right holders who have completed Attachment 1A.

- B. Has the Designated Applicant submitted an IRS Form W-9 to this Department within the last 2 years? Yes ☐ No ☒
If no, complete the form and attach to this application (Attachment 1B).

- C. Are all applicants on this form listed in IDWR's records as the current owners of the water right? Yes ☒ No ☐
If no, attach a *Notice of Change in Water Right Ownership* form along with the required documentation and fee (Attachment 1C).

- D. Is this application being completed by an authorized representative of the Designated Applicant? Yes ☒ No ☐
If yes, representatives (includes employees of Designated Applicant companies) must complete this section and submit documentary proof of their authority to represent the Designated Applicant (Attachment 1D).

Name of Representative Thomas J. Budge Organization Racine Olson

Professional Title Attorney Email Address tj@racineolson.com

Mailing Address P.O. Box 1391, Pocatello, Idaho 83204-1391 Phone Number 208-232-6101

☐ Send all correspondence for this application to the representative and not to the Designated Applicant.

OR

☒ Send original correspondence to the Designated Applicant and copies to the representative.

2. DESCRIPTION OF WATER RIGHT OFFERED TO THE BANK

☒ The full water right is being offered to the Bank.

OR

☐ A part of the water right is being offered to the Bank.

If a portion of the water right is being offered, **complete Attachment 2.**

3. MAP

Attach a map of the point(s) of diversion and place(s) of use proposed to be idled by this lease application. Make sure the idled 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 idle. If the water right proposed for lease is located within a permissible place of use (PPU) and portions of the PPU will continue to receive water from non-leased water rights, clearly outline on a map the acres within the PPU that will continue to be irrigated, as well as acres that will be idled during the lease term. Label the map **Attachment 3.**

STATE OF IDAHO
WATER RESOURCE BOARD

APPLICATION TO SELL OR LEASE A WATER RIGHT
(Continued)

4. GENERAL INFORMATION

- A. Is the diversion works or system owned or managed by an irrigation district or water delivery company? Yes ☐ No ☒
If yes, provide written consent from the company, corporation or irrigation district authorizing the proposed sale or lease (Attachment 4A).

If your water right is delivered through a canal, lateral or ditch operated by a canal company, irrigation district, or similar delivery entity, your lease request must include written consent from the company, district, or similar entity for your removal of water from its system pursuant to [Section 42-108, Idaho Code](#) and [IDAPA WSB Rule 37.02.03.25.02e](#).

- B. Please provide a description of the current water diversion and delivery system.
Open ditch with a portable pump.

- C. Describe any other water rights used for the same purpose at the same place of use as the water right being offered to the Bank. None

- D. Are any of the water rights identified in Section 4C stacked with the water right proposed for lease? Yes ☐ No ☒
Stacked water rights are used together to achieve a common beneficial use, such as irrigation of the same lands. Stacked water rights cannot be separated and must be jointly leased to the Water Supply Bank. Stacked water rights qualify for the multiple fee payment of \$500.

- E. Will the present place of use continue to receive water from any other source? Yes ☐ No ☒
If yes, explain the relationship between the different water sources and how enlargement of the authorized use will not occur if this water right is leased.

- F. Identify annual volumes and/or rates of water diverted in the last 5 years to accomplish the beneficial use authorized by this water right. Water right has was leased into the Water Supply Bank from 2017 to 2021 under Water Supply Bank Lease Agreement No. 581.

- G. Has any portion of this water right undergone a period of five or more consecutive years of non-use? Yes ☐ No ☒
If yes, describe the circumstances and attach evidence to demonstrate how the water right has not been lost through forfeiture (Attachment 4G). See [Section 42-223, Idaho Code](#) for exceptions to forfeiture. Your application may be denied if forfeiture concerns are not addressed.

- H. Is this water right involved in any other IDWR process, such as an application for transfer or a mitigation plan? Yes ☐ No ☒
If yes, describe.

STATE OF IDAHO
WATER RESOURCE BOARD

APPLICATION TO SELL OR LEASE A WATER RIGHT
(Continued)

5. SALE/LEASE AGREEMENT

A. Is the water right, or portion thereof, offered to the Idaho Water Resource Board (IWRB) for sale ☐ or lease ☒.

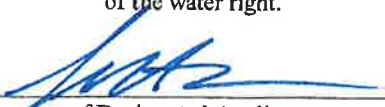
If lease, specify the years when the use of water will be suspended: 2024 to 2029 (maximum lease period 5 calendar years).
(Year) (Year)

B. Show the minimum payment acceptable to the seller/lessor. The minimum payment may be shown as the "current rental rate" as established by the IWRB. Include the method of determining the minimum payment if other than the current rental rate.
Current rental rate.

I hereby assert that the information contained in this application is true to the best of my knowledge, and that I have the authorities necessary to offer this water right for sale or lease to the Idaho Water Resource Board.

The Designated Applicant acknowledges the following:

1. Payment to the Designated Applicant is contingent upon the sale or rental of the water right from the Bank.
2. While a water right is in the Bank, the seller/lessor of the water right may not use the water right, even if the water right is not rented from the Bank.
3. A water right accepted into the Bank stays in the Bank until the Designated Applicant receives written confirmation from the Board or Water Supply Bank that the water right has been released from the Bank.
4. While a water right is in the Bank, forfeiture is stayed.
5. Acceptance of a water right into the Bank does not, in itself, confirm the validity of the water right or any element of the water right.


Signature of Designated Applicant

Jeff Trosper
Printed Name

3/27/2024
Date


Signature of Authorized Representative

Thomas J. Budge, Attorney
Printed Name

3/27/2024
Date

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

**STATE OF IDAHO
WATER RESOURCE BOARD**

ATTACHMENT 1A

Additional Water Right Holders Party to the Lease Application

For the water right on this application, list all owners (individuals or business entities) of the right or the property to which it is appurtenant. All water right holders must sign a Water Supply Bank Lease Application. However, only the Designated Applicant needs to provide a completed IRS Form W-9 (Attachment 1B). **All correspondence and any financial payment associated with the rental of this water right will be directed to the Designated Applicant.** If additional space is needed to list any other water right holders, attach a second copy of Attachment 1A.

If submitting multiple applications, it is only necessary to complete one Attachment 1A for the group of applications. List each water right below.

Water Right No(s). _____

	Designated Applicant	Applicant #2	Applicant #3
Name	HK Contractors, Inc.		
Mailing Address	c/o Jeff Trospen P.O. Box 51450 Idaho Falls, Idaho 83405		
Phone Number	(208) 523-6600		
Email Address	jefftrosper@hkcontractors.com		
Applicant Declaration	As Designated Applicant, I submit this lease application on behalf of all other water right holders.	I authorize the Designated Applicant to submit this application on my behalf.	I authorize the Designated Applicant to submit this application on my behalf.
Signature			

	Applicant #4	Applicant #5	Applicant #6
Name			
Mailing Address			
Phone Number			
Email Address			
Applicant Declaration	I authorize the Designated Applicant to submit this application on my behalf.	I authorize the Designated Applicant to submit this application on my behalf.	I authorize the Designated Applicant to submit this application on my behalf.
Signature			

**STATE OF IDAHO
WATER RESOURCE BOARD**

Complete Attachment 2 if only a portion of the water right is offered to the Bank.

ATTACHMENT 2

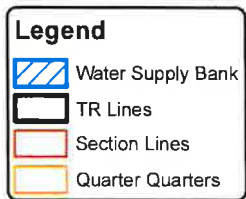
DESCRIPTION OF A WATER RIGHT PORTION OFFERED TO THE WATER SUPPLY BANK

1. <u>Water Right Number</u>	Nature of Use	Leased Rate (cfs)	Leased Volume (af)	Leased Acres (ac)
<u>22-207B</u>	<u>Irrigation</u>	<u>1.2</u>	<u></u>	<u>28</u>
	<u></u>	<u></u>	<u></u>	<u></u>
	<u></u>	<u></u>	<u></u>	<u></u>
	<u></u>	<u></u>	<u></u>	<u></u>
	Total Amounts:	<u>1.2</u>	<u></u>	<u>28</u>

2. Source of water Teton River tributary to Snake River

3. Point(s) of diversion:

Twp	Rge	Sec	Lot	¼	¼	¼	County
7N	40E	36		SW	NE		Fremont





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

05/08/26

HK Contractors Inc
PO Box 51450
Idaho Falls ID 83405-1450

RE: APPLICATION TO LEASE WATER RIGHTS No. 22-14581 – CONTRACT 1868

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

Dear Applicant:

The Department of Water Resources has completed its review of your application to lease the above-mentioned water right to the Water Supply Bank. **Enclosed are two original Water Supply Bank Lease Contracts for review and signature. Please sign and return both Lease Contracts within 14 days.** Upon signature and return of the contracts, the Department will also sign the original contracts and return an executed copy to you. The Lease Contract is not considered final until you and the Department have both signed.

The right will automatically be released from the Bank on December 31, 2028 unless the right is released earlier by the Board, or upon your request. To release the right from the Bank prior to the release date, submit a written request on the Request to Release a Water Right from the Bank form. To propose a new lease period, submit a new Application to Sell or Lease a Water Right to the Water Supply Bank form along with applicable fees to the Department. These forms are available from any IDWR office or from our public website at <http://www.idwr.idaho.gov>. Please note your right may not be available for immediate release if it has been rented.

Please review all the conditions of acceptance listed on the Lease Contract, specific note condition #3 which says:

"While a right is in the bank, **the lessor may not use the right** without approval of the department even if the right is not rented from the bank. Any violation of the terms of this lease may result in enforcement procedures pursuant to Idaho Code § 42-351 for illegal diversion and use of water and may include civil penalties pursuant to Idaho Code § 42-1701B."

If you have questions regarding this matter, please contact Department staff at bank@idwr.idaho.gov or 208-287-4800.

Respectfully,

for
Water Supply Bank

Enclosures: Proposed Lease Contracts
Receipt No. C118121

CC: TJ Budge, Racine Olson (via email)



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

05/08/26

HK CONTRACTORS INC
C/O JEFF TROSPER
PO BOX 51450
IDAHO FALLS ID 83405

RE: LEASE APPLICATION NO(S). 2972 - RETURNED INCOMPLETE

Dear Applicant:

On April 9, 2024, the Department of Water Resources (Department) received application to lease water right no. 22-207B to the Water Supply Bank (Bank). Review of the application found the water right(s) can not be accepted for lease because the application is incomplete. The application is being returned incomplete.

Water Supply Bank Rule 25 (IDAPA 37.01.03.025.06) contains the information that applicants are required to include for an application to lease a water right to be a complete filing. Application no. 2972 did not include:

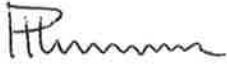
- c. Information demonstrating the water right has not been abandoned or forfeited as defined by Section 42-222(2) Idaho Code.

On July 16, 2024 the Department sent a letter requesting additional information demonstrating use of water within the last 5 years or a statutory defense to forfeiture. The letter stated that information available to the Department indicated water use under the right had not occurred in years 2013, 2014, 2015, 2016, 2022, 2023 (the right was leased into the WSB 2017-2021). The letter also provided notice that the application will be returned incomplete if the information is not received.

On August 1, 2024 the Department received a response that included a description of the timing of the previous lease and argument that 5 years of consecutive non-use had not occurred. The response stated "...even if water right 22-207B was not used from 2013-2016 and from 2022-2023 (which is not admitted, as I have not undertaken that evaluation), it has not been forfeited because there has not been five consecutive years of non-use. The placement of water right 22-207B in the bank from 2017-2018 exempted it from forfeiture, causing the five-year clock to begin anew in 2022." The response did not include evidence of water use. At the time water right 22-207B was leased in 2017 and when application no. 2972 was filed in 2024, Idaho Code § 42-1764 stated the five year period of nonuse for forfeiture shall continue to accrue upon removal from the bank if a period of non-use occurred prior to the effective date of acceptance into the bank and the right was not beneficially used while in the bank. Information in the record for the right indicates water use had not occurred for four years prior to the lease in 2017. Therefore, the five-year period did not reset upon release from the bank in 2018. Two years of non-use likely occurred following release in 2018. Application no. 2972 was received in 2024 after 6 years of non-use had likely occurred.

Without evidence of use or a valid defense demonstrating the right has not been lost due to non-use, application no. 2972 is incomplete and is being returned. The lease application(s) may be filed again with the required information within fourteen (14) days without having to submit new application filing fee(s). Department resources, including staff time, were expended to complete a full review of your application(s). Therefore, the lease application filing fee will not be refunded. Please note filling an application to lease a water right does not toll the forfeiture period unless the right is accepted into the Bank and a lease contract is executed.

Respectfully,

A handwritten signature in dark ink, appearing to read 'PH' followed by a series of loops and a horizontal line.

Phill Hummer
Section Manager, Water Rights Section

Enclosure: Lease Application(s)

cc: TJ Budge, Racine Olson

MEMORANDUM FOR APPLICATION # 2972

To: Water Right No. 22-207B

From: Phill Hummer

Date: 04/22/2026

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

PURPOSE/NARRATIVE: Lease application no. 2972 was received on 04/09/2024 proposing to lease the entirety of water right no. 22-207B. Review of available imagery and history of prior leases found that it was likely a period of more than 5 years of non-use had occurred. On July 16, 2024 IDWR sent a letter to the applicant requesting additional information demonstrating historic use or a defense to forfeiture pursuant to WSB Rule 025. The letter provided notice the application would be returned if the information was not received. On August 1, 2024 IDWR receive a response from TJ Budge (Racine Olson) via email on behalf of the applicant. The response argues that due to timing of the previous lease a period of more than 5 years of non-use had not occurred. In late 2024, IDWR became aware of pending legislation to change I.C. 43-1764 and it was decided to continue to hold both applications until the proposed change became effective. In February of 2026, IDWR received a request to complete processing application no. 2972.

AUTHORITY TO FILE: The application is signed by Jeff Trosper. Annual reports for HK Contractors Inc on file with Idaho Secretary of State list Jeff Trosper as the president of the company.

WATER RIGHT VALIDITY: The partial decree for right 22-207B was issued in 2012 for 1.60 cfs and 38.0 acres. Then on February 13, 2017 IDWR received an application to lease a 28 acre portion of the right. The application stated in section F, "Water right decreed October 1, 2012. Water right has not been diverted since then, but has not undergone five years of non-use." Based on that statement and available imagery non-use occurred in years 2013, 2014, 2015, and 2016. Lease contract no. 581 was completed accepting 28.0 acres into the bank for a term of 2017 to 2021. The right was not rented while leased under contract 581. On April 9, 2024 IDWR received an application proposing to lease the same 28.0 acres. The application form identified lease contract 581 but did not provide any other information regarding historic use. Idaho Code 42-1764(2) stated (prior to the change in 2025):

The five (5) year period of nonuse for forfeiture of a water right shall begin to accrue upon removal of a right from the bank by the owner of the right if a period of nonuse did not occur prior to the date of acceptance of the right into the bank. The five (5) year period of nonuse shall continue to accrue if a period of nonuse occurred prior to the effective date of acceptance of the right into the bank and the right was not beneficially used while in the bank.

Pursuant to IC at the time the application was received in 2024, 6 years of non-use had likely occurred prior to the submittal of application 2972, years 2013-2016 and 2021-2022. On July 16, 2024 IDWR sent a letter requesting information demonstrating the right had not been lost to forfeiture. On August 1, 2024 TJ Budge responded on behalf of the applicant with argument that upon release from the bank in 2022 the non-use period reset and that the right could be accepted because a *consecutive* 5 period of non-use had not occurred. This argument is not convincing because a plain reading of the language of IC 42-1764 clearly means the non-use period does not have to be consecutive.

WSB Rule 025.02.c requires applicants to submit information that the water right has not been lost through abandonment or forfeiture. Rule 025.04 directs staff to request missing information if lease applications are not complete and conclude applications when the required information is not received. Lease application 2972 should be returned because it is incomplete.

ENLARGEMENT OF USE: If the portions proposed for lease have not been lost or abandoned then accepting the entire right for lease and making it available to rent would likely not cause an enlargement. Water right places of use for Fremont Madison Irrigation District delivery rights overlap the place of use but 22-207B authorizes surface water use (not supplemental ground water) and the right is not limited in use in combination with other rights by conditions.

LOCAL PUBLIC INTEREST: Accepting valid rights into the water supply bank to provide water for new and supplemental uses is in the local public interest. If the right has not been lost or abandoned, the lease would be within the local public interest.

DEPARTMENT STAFF OR WATERMASTER COMMENTS: The location of the water right POD is with IDWR's Eastern Region and within Water District # 01. However, requests for comment regarding the proposed lease were not sent because of the forfeiture concerns and the incomplete status of the application.



RECEIVED

APR 09 2024

DEPARTMENT OF
WATER RESOURCES

April 2, 2024

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

Re: Water Supply Bank Application to Lease - Water Right 22-207B

To Whom It May Concern,

Enclosed please find for filing an Application to Lease water right no. 22-207B to the Water Supply Bank, together with a check in the amount of \$250 for the filing fee. Should you have any questions, please give me a call if you have any questions.

Sincerely,

A handwritten signature in dark ink, appearing to read 'T. J. Budge', is written over a horizontal line.

T. J. BUDGE

c: Jeff Trospen

2972



February 26, 2026

Sent via email

David Graybill
Water Supply Bank Coordinator
Idaho Department of Water Resources
P.O. Box 83720
Boise, Idaho 83720-0098
bank@idwr.idaho.gov

Re: Application to Lease Water Right 22-207B into the Water Supply Bank

To whom it may concern,

I am writing on behalf of HK Contractors, Inc. ("HK") in connection with its application to lease water right no. 22-207B into the Water Supply Bank. This lease application was originally filed in 2024. You and I had correspondence concerning a forfeiture concern raised by the Department. You may be aware that the Legislature amended Idaho Code § 42-1764 last year to clarify that the forfeiture clock begins to run anew when a water right is released from the Bank. Therefore, I kindly ask that the Department complete processing and accept the lease of water right no. 22-207B into the Bank.

If you have any questions, please give me a call.

Sincerely,

A handwritten signature in blue ink that reads 'T. J. Budge'.

T. J. BUDGE

c: Jeff Trosper, HK Contractors, Inc.

Hummer, Phill

From: Hummer, Phill
Sent: Friday, October 4, 2024 7:43 AM
To: 'jefftrosper@hkcontractors.com'
Subject: FW: HK Contractors Lease 22-207B

Jeff,

I have been working with TJ to get the information necessary to process and accept water right 22-207B into the water supply bank as proposed on application no. 2972, see below and just now realized in all correspondence I forgot to also include you. Typically, IDWR staff work directly with representatives but I have not heard from TJ since late August and I wanted to include you in the emails before taking any action. Please work with TJ to provide the information needed before November 4, 2024.

-Phill

From: Hummer, Phill
Sent: Friday, October 4, 2024 7:35 AM
To: tj@racineolson.com
Subject: RE: HK Contractors Lease 22-207B

T.J.

I am following up on the lease application for 22-207B. We can continue to hold the application if you need more time to put together a response.

We also have a lease application for 22-14581 on property immediately to the north and have similar concerns about the recent use. Since we only have images for 2019, 2021, and 2023 I assigned the application to Aaron to conduct a review of Landsat imagery and other resources that may provide more information than just the aerial imagery. But I suspect we may need additional information from you or the water right owner to accept the lease and I want to give you advanced notice.

If I don't receive a response the request for information letter for 22-207B or a request for additional time to respond by November 4, 2024 I will take action to return the lease application as incomplete.

-Phill

From: Hummer, Phill
Sent: Tuesday, August 20, 2024 8:46 AM
To: TJ Budge <tj@racineolson.com>
Subject: RE: HK Contractors Lease 22-207B

Attached is a copy of the memo. For future reference all IDWR guidance memos are available on IDWR's website here: <https://idwr.idaho.gov/legal-actions/guidance-documents/>

Idaho Code 42-1764 provides:

"(2) Water rights obtained by the board or by a local committee appointed by the board and credited to the water supply bank are not subject to forfeiture for nonuse pursuant to section 42-222(2), Idaho Code, while retained in or

rented from the water supply bank. The five (5) year period of nonuse for forfeiture of a water right shall begin to accrue upon removal of a right from the bank by the owner of the right if a period of nonuse did not occur prior to the date of acceptance of the right into the bank. The five (5) year period of nonuse shall continue to accrue if a period of nonuse occurred prior to the effective date of acceptance of the right into the bank and the right was not beneficially used while in the bank.”

I think that this part of the statute creates essentially 3 scenarios:

-If a water right has *not* undergone a period of non-use prior to lease then the 5 year non-use period will begin after release from the bank.

-If a period of non-use *has* occurred prior to a lease then the 5 year period will continue after the right is released but only if the water right is not rented.

-If a water right is leased and rented then the 5 year period starts over when the right is released from the water supply bank.

To answer your question directly, no IDWR would not take the position the right is forfeited for two reasons.

One reason is that IDWR does make determinations of forfeiture when reviewing water supply bank applications. The administration rules that govern water supply bank processes (IDAPA 37.02.03) require applicants to provide information demonstrating that rights proposed for lease have not been lost to forfeiture or abandonment. The rules also state that the Idaho Water Resource Board shall consider that information when deciding whether to accept a right for lease. It is IDWR’s policy to accept water rights on behalf of the IWRB when there is evidence that a period of 5 years of non-use has not occurred or a defense to forfeiture provisions. It is IDWR’s policy to return applications and not accept the water right when there is evidence a period of nonuse has occurred. When an application is returned no determination is made regarding the use or validity of the right, only that the lease application is incomplete.

The second reason is that in your scenario the right is rented. IDWR has interpreted the beneficially used part of 42-1764 to mean a rental. So the 5 year non use period would reset upon release and there would be a 2 year nonuse period.

Let me know if you have other questions.

-Phill

From: TJ Budge <tj@racineolson.com>

Sent: Monday, August 19, 2024 1:24 PM

To: Hummer, Phill <Phill.Hummer@idwr.idaho.gov>

Cc: Howe, Bob <Bob.Howe@idwr.idaho.gov>

Subject: RE: HK Contractors Lease 22-207B

CAUTION: This email originated outside the State of Idaho network. Verify links and attachments BEFORE you click or open, even if you recognize and/or trust the sender. Contact your agency service desk with any concerns.

Phil,

So I understand, if a water right undergoes 4 years of non-use, is placed into the Water Supply Bank for 5 years, is rented from the Bank during that entire 5 year period, is released from the Bank, and is not used for two consecutive years after being released, it is IDWR’s position that the water right is forfeited for non-use?

Thanks,

T.J. Budge

RACINE OLSON

201 E. Center St. | P.O. Box 1391 | Pocatello, Idaho 83204

Office: (208) 232-6101 | Direct: (208) 478-3467 | Cell: (208) 705-0826 | racineolson.com

Assistant: Tessa Sparrow | Direct: (208) 478-3444 | tessa@racineolson.com

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From: TJ Budge

Sent: Monday, August 19, 2024 1:01 PM

To: Hummer, Phill <Phill.Hummer@idwr.idaho.gov>

Cc: Howe, Bob <Bob.Howe@idwr.idaho.gov>

Subject: RE: HK Contractors Lease 22-207B

Please send me a copy of Multiple Program Memo #2

T.J. Budge

RACINE OLSON

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From: Hummer, Phill <Phill.Hummer@idwr.idaho.gov>

Sent: Thursday, August 8, 2024 6:58 AM

To: TJ Budge <tj@racineolson.com>

Cc: Howe, Bob <Bob.Howe@idwr.idaho.gov>

Subject: HK Contractors Lease 22-207B

TJ,

I reviewed your response letter sent via email on August 1 and wanted to send some additional information to further describe the Department's position. Firstly, a general stream adjudication is a legal proceeding for determining ownership and the elements of water rights. Processing a water supply bank application is not a determination of the elements of a right and therefore IDWR does not consider submitting a lease application nor acceptance into the water supply bank an action that tolls the forfeiture provisions in the same way that a right is protected during the time a claim is filed. However, Idaho Code 42-1764(2) does specify that a water right accepted into the water supply bank is not subject to forfeiture for nonuse pursuant to 42-222(2). So IDWR does not consider nonuse during the years a right is under lease contract when reviewing historic use.

IDWR staff rely on Idaho Code 42-1764(2) which says the five year period of nonuse shall continue to accrue if a period of nonuse occurred prior to lease contract and Multiple Program Memo #2 which says that IDWR will presume a resumption of use or a filing initiated before the end of the sixth calendar year will prevent a finding of forfeiture (page 2). When Memo #2 and 42-1764 are considered together along with an initial review of available

aerial imagery and the fact that the right was not rented while leased into the bank, we found that a period of more than five years of nonuse may have occurred. Consisting of four years following the issuance of the partial decree and the beginning of lease contract 581 (2013-2016) and the two years following the end of lease contract 581 and the filing of lease application 2972 (2022-2023). However, this conclusion is based solely on timing and available imagery and IDWR staff recognize the available imagery may not be fully representative of the historic use of water under the right. That is why we ask the applicant to provide additional information demonstrating use in the timeframe that it appears use did not occur based on imagery.

I agree and recognize that forfeiture is not favored and requires clear and convincing evidence. The typical process IDWR staff take when reviewing a water supply bank lease application is to request additional information from the applicant if evidence of use is not clear. Then based on the information provided we either accept the lease because there is some evidence of use (or a valid defense) or return the application as incomplete pursuant to IDAPA 37.02.03.025.02.c. We would also accept a portion of the right if the information provided demonstrated partial use.

Hopefully this information helps you understand IDWR's perspective in this matter. We still need information showing use occurred from 2013-2016 or 2022-2023 or a reasonable defense to forfeiture in order to finish processing lease application 2972. Please let me know if you have any questions or want to discuss this further.

Phill Hummer
Section Manager



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

July 16, 2024

HK Contractors, Inc.
PO Box 51450
Idaho Falls, ID 83405

**RE: APPLICATION TO LEASE WATER RIGHT NO 22-207B TO THE WATER SUPPLY
BANK. ADDITIONAL INFORMATION REQUEST**

Dear Applicant:

On April 9, 2024, the Department of Water Resources (Department) received an application to lease water right 22-207B to the Water Supply Bank (Bank). Water Supply Bank Rule 25 (IDAPA 37.02.03.025.06.c) requires the Department to consider whether the water right has been lost through abandonment or forfeiture as defined by Section 42-222(2), Idaho Code. Section 42-222(2) states, in part, "All rights to the use of water acquired under this chapter or otherwise shall be lost and forfeited by a failure for the term of five (5) years to apply it to the beneficial use for which it was appropriated."

On your application (section 4.F.) you stated that, "Water right has was leased into the Water Supply Bank from 2017 to 2021 under Water Supply Bank Lease Agreement No. 581." The partial decree for water right 22-207B was issued in 2012 and the right was leased into the Water Supply Bank from 2017-2021. A review of previous aerial imagery was unable to support that 28.0 acres of irrigation has occurred from right 22-207B, for years 2013, 2014, 2015, 2016, 2022, and 2023. A period of more than five years of non-use occurred following issuance of the partial decree.

Please submit information demonstrating right 22-207B has not been lost through abandonment or forfeiture for application processing to continue. Information relative to forfeiture is required for lease application #2972 to be considered a complete filing (IDAPA 37.02.03.025.02.c). If the information is not received within thirty days, the Department will return the incomplete application pursuant to IDAPA 37.02.03.025.04. Upon a showing the right has not been abandoned or forfeit right 22-207B will be accepted into the Bank, otherwise the right will not be acceptable, and the application will be returned unprocessed.

If you have any questions regarding this matter, please contact the Department at (208) 287-4847.

Sincerely,



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