

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

WATER SUPPLY BANK LEASE CONTRACT No. 1034

This Lease Contract ("**Lease**") is between the Idaho Water Resource Board ("**Board**"), and

LESSOR: CHARLES M JOHNSON
11 QUIGLEY LN
HAILEY, ID 83333

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AUG 31 2020

DEPARTMENT OF
WATER RESOURCES

RECITALS

1. The Board is authorized under chapter 17, title 42, Idaho Code to operate a water supply bank and to contract with lessors to act as an intermediary in facilitating the rental of water.
2. The Lessor has filed a completed application to lease water rights described below into the Water Supply Bank on forms supplied by the Idaho Department of Water Resources and received by the Department on July 02, 2019.
3. The Director of the Idaho Department of Water Resources has reviewed the application for compliance with the Water Supply Bank rules and has approved the Lease subject to conditions listed below.

NOW, THEREFORE, in consideration of the mutual covenants and contracts herein contained, and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. **WATER RIGHTS:** The Lessor shall lease and the Board shall accept into the Bank the Applicant's water rights described as follows:

Summary of Water Rights or Portions Leased to the Bank

Water Right No.	Priority Date	Source	Diversion Rate (CFS)	Diversion Volume (AF)	Acres (AC)
37-22118	3/24/1883	BIG WOOD RIVER, tributary to MALAD RIVER	0.20	Not Stated	3.5
Combined Lease Totals			0.20	Not Stated	3.5

Summary of Water Rights Elements Rentable From the Bank

Water Right	Diversion Rate (CFS)	Diversion Volume (AF)	Acres (Limited) (AC)	Rate Per Acre (CFS/AC)	Volume Per Acre (AF/AC)
35-2122	0.16	12.3	3.5	0.05	3.5
Combined Limit Totals	0.16	12.3	3.5	0.05	3.5

** The water right elements rentable have been reduced from the water right elements leased to account for combined limits and conveyance losses of 20%*

2. **COMPENSATION:** The Lessor shall accept and the Board shall pay compensation determined by the amount of water rented under the following rental rate during such times as the water is rented from the Bank over the term of this Lease.

Minimum Payment Acceptable: Current Rental Rate

3. **TERM OF LEASE:** The term of this lease shall be January 1, 2019 to December 31, 2023. This Lease shall bind the parties and take effect when both parties have signed it.

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STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

WATER SUPPLY BANK LEASE CONTRACT No. 1034

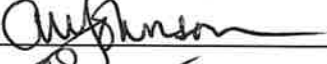
4. **WATER SUPPLY BANK CONDITIONS OF ACCEPTANCE:** The Lessor shall abide by all terms and conditions contained in the Water Supply Bank Conditions of Acceptance, attached hereto as "Attachment A" and incorporated herein by this reference.
5. **CHANGE OF WATER RIGHT:** This lease specifies water right elements including but not limited to: diversion rates; diversion volumes; number of acres authorized to be irrigated; places of use; points of diversion; beneficial uses; and seasons of use. During the term of this lease, if a water right is administratively changed due to a water right split and renumbering, this lease may be reduced by an equal amount to reflect the water right elements as legally defined under the water right. If a lease contract cannot be reduced sufficient to reflect the legal definition of a water right as amended through a water right split and/or water right transfer, the Board may release the water right from the Water Supply Bank.
6. **ASSIGNMENT OF CONTRACT:** This lease is between the Board and the Lessor, who is the recognized owner or designated representative of the recognized owners of water rights described herein. Should ownership of any part of a water right herein described change during the term of this lease, either through a water right split, a water right transfer, sale of property to which the water right is appurtenant, or through any other recognized water right reassignment, the lease benefits and obligations to the conditions of acceptance for any such water rights will be assigned to the new owners.
7. **DUPLICATE ORIGINAL:** This Lease is executed in duplicate. Each of the documents with an original signature of each party shall be an original.

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

WATER SUPPLY BANK LEASE CONTRACT No. 1034

IN WITNESS WHEREOF, the parties have executed this Contract on the date following their respective signatures.

LESSOR: CHARLES M JOHNSON
11 QUIGLEY LN
HAILEY, ID 83333

By 
Title Owner
Date 8/27/2020

IDAHO WATER RESOURCE BOARD

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

By 
Brian Patton, Acting Administrator
Idaho Water Resource Board

Date 08/31/20

Lease approved by IDWR 

Date 08/31/20

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STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

WATER SUPPLY BANK LEASE CONTRACT No. 1034

ATTACHMENT A WATER SUPPLY BANK CONDITIONS OF ACCEPTANCE

The water rights or portions thereof leased to the bank are described as follows:

Source and Location of Point(s) of Diversion for Water Right No(s): 37-22118

BIG WOOD RIVER SWNW Sec. 20 Twp 03N Rge 18E BLAINE County

Water Right	Beneficial Use	Season of Use			Diversion Rate (CFS)	Volume (AF)
		From		To		
37-22118	IRRIGATION	04/15	to	10/31	0.20 cfs	Not Stated
	STOCKWATER	04/15	to	10/31	0.10 cfs	Not Stated
Totals:					0.20 cfs	Not Stated

PLACES OF USE TO BE IDLED UNDER THIS LEASE: IRRIGATION

Twp	Rng	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
02N	18E	10					1.8			1.7									3.5

PLACES OF USE TO BE IDLED UNDER THIS LEASE: STOCKWATER

Twp	Rng	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
02N	18E	10					X			X									X

Total Acres: 3.5

ADDITIONAL CONDITIONS OF ACCEPTANCE

1. The water rights referenced above will be rented from the bank at the current rental rate.
2. There is no rental payment to the lessor of the water right if the right or a part thereof is not rented from the bank.
3. 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.
4. A right accepted into the bank stays in the bank until the Board releases it, or the lease term expires. A right may be released from the bank upon request, provided the Board approves the release. Unless approved by the Department, leased rights may not be immediately available for release.
5. While a water right is in the bank, forfeiture provisions are stayed pursuant to Idaho Code § 42-223(5).
6. Rental of water under this right is subject to the limitations and conditions of approval of the water right.
7. Failure of the right holder to comply with the conditions of acceptance is cause for the Director to rescind acceptance of the lease.

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STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

WATER SUPPLY BANK LEASE CONTRACT No. 1034

8. Acceptance of a right into 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.
9. In accordance with Idaho Code § 42-248 and § 42-1409(6), all owners of water rights are required to notify the Department of any changes in mailing address or change in ownership of all or part of a water right. Notice must be provided within 120 days of the change.
10. If a water right leased into the Water Supply Bank is sold or conveyed during the lease term, and if the leased right was rented, the rental proceeds will be disbursed in the following manner regardless of any arrangements between the buyer(s) and seller(s) to the contrary:
 - a. Rental payments will go to the lessor(s) of record at the beginning of the rental season, even if the Department processes a Notice of Change in Water Right Ownership during the rental season.
 - b. New lessor(s) of record will receive payment for any subsequent rental seasons.
11. The water right(s) is leased to the bank subject to all prior water rights and shall be administered in accordance with Idaho law and applicable rules of the Department of Water Resources.
12. Use of water under this right may be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. As of September 18, 2019, this water right was within State Water District No. 37.
13. The unleased irrigation portion of this right is limited to a total diversion rate of 0.24 cfs for the irrigation of 4.1 acres in a single season.
14. The unleased stockwater portion of this right is limited to a total diversion rate of 0.1 cfs and may not exceed 6,500 gallons per day.
15. The unleased portions of this right are limited to a total diversion rate of 0.24 cfs for the irrigation of 4.1 acres in a single season
16. Pursuant to Idaho Code § 42-1412(6), this water right is subject to such general provisions necessary for the definition of the rights or for the efficient administration of water rights as determined by the Snake River Basin Adjudication court in the final unified decree entered 08/26/2014.

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Idaho Water Resource Board
Water Supply Bank Lease Contract No. 1034

37-22118
Effective until December 31, 2024

This map depicts the **place of use to be idled** pursuant to the lease contract and is attached to the contract solely for illustrative purposes.



- Approved Lease Point of Diversion
- ▭ Township/Range
- ▭ Sections
- ▭ QQ
- ▭ Approved Lease Place of Use



0 500 1,000 Feet

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SEP 22 2020

STATE OF IDAHO
WATER RESOURCE BOARD

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JUL 02 2019

DEPARTMENT OF
WATER RESOURCESAPPLICATION TO SELL OR LEASE A WATER RIGHT
TO THE WATER SUPPLY BANKDesignated Applicant Charles M. Johnson

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

Water Right No. 37-22118

(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: gmhDate Received: 7-2-19Receipt # C107131W-9 received? Yes ☒ No ☐

(Route W-9 to Fiscal)

Name on W-9: Charles M JohnsonSCANNED
SEP 02 2019

1442

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 Charles M. Johnson

Mailing Address 11 Quigley Ln. Hailey, Idaho 83333
Street City State Zip Code

Email Address _____ Phone Number _____

☐ 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 Fritz X. Haemmerle Organization Haemmerle Law, P.L.L.C.

Professional Title Attorney Email Address fxh@haemlaw.com

Mailing Address P.O. Box 1800, Hailey, Idaho 83333 Phone Number (208) 578-0520

☐ 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**.

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P a 2

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.
Water is diverted out of Big Wood River into Hiawatha Canal and then delivered to the place of use from the
Canal.
- 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.
Domestic wells.
- 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.
Lot 1, BLock 1, Marvin Gardens Subdivision will continue to receive water to irrigate 4.1 acres.
- 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.
See Affidavit of James W. Phillips.
- 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?
If yes, describe. Yes ☐ No ☒

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: 2020 to 2024 (maximum lease period 5 calendar years).
(Year) (Year)

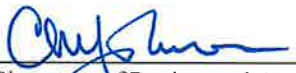
B. Show the minimum payment acceptable to the seller/lessor. The minimum payment may be shown as the "current rental rate" as established by the IWRB. Include the method of determining the minimum payment if other than the current rental rate.

"current 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

Charles M. Johnson
Printed Name

7/1/19
Date


Signature of Authorized Representative

Fritz X. Hasmann
Printed Name

7/1/19
Date

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

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**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). 37-22118

	Designated Applicant	Applicant #2	Applicant #3
Name	Charles M. Johnson	Connie Johnson	
Mailing Address	11 Quigley Ln., Hailey, Idaho 83333	11 Quigley Ln., Hailey, Idaho 83333	
Phone Number			
Email Address			
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			

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**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>	<u>Nature of Use</u>	<u>Leased Rate</u> (cfs)	<u>Leased Volume</u> (af)	<u>Leased Acres</u> (ac)
<u>37-22118</u>	irrigation	0.20		3.5
	stockwater	0.01		3.5
	Total Amounts:	0.20		3.5

2. Source of water Big Wood River tributary to Malad River

3. Point(s) of diversion:

Twp	Rge	Sec	Lot	¼	¼	¼	County
3N	18E	20		SW	NW		Blaine

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Water Supply Bank for 37-22118



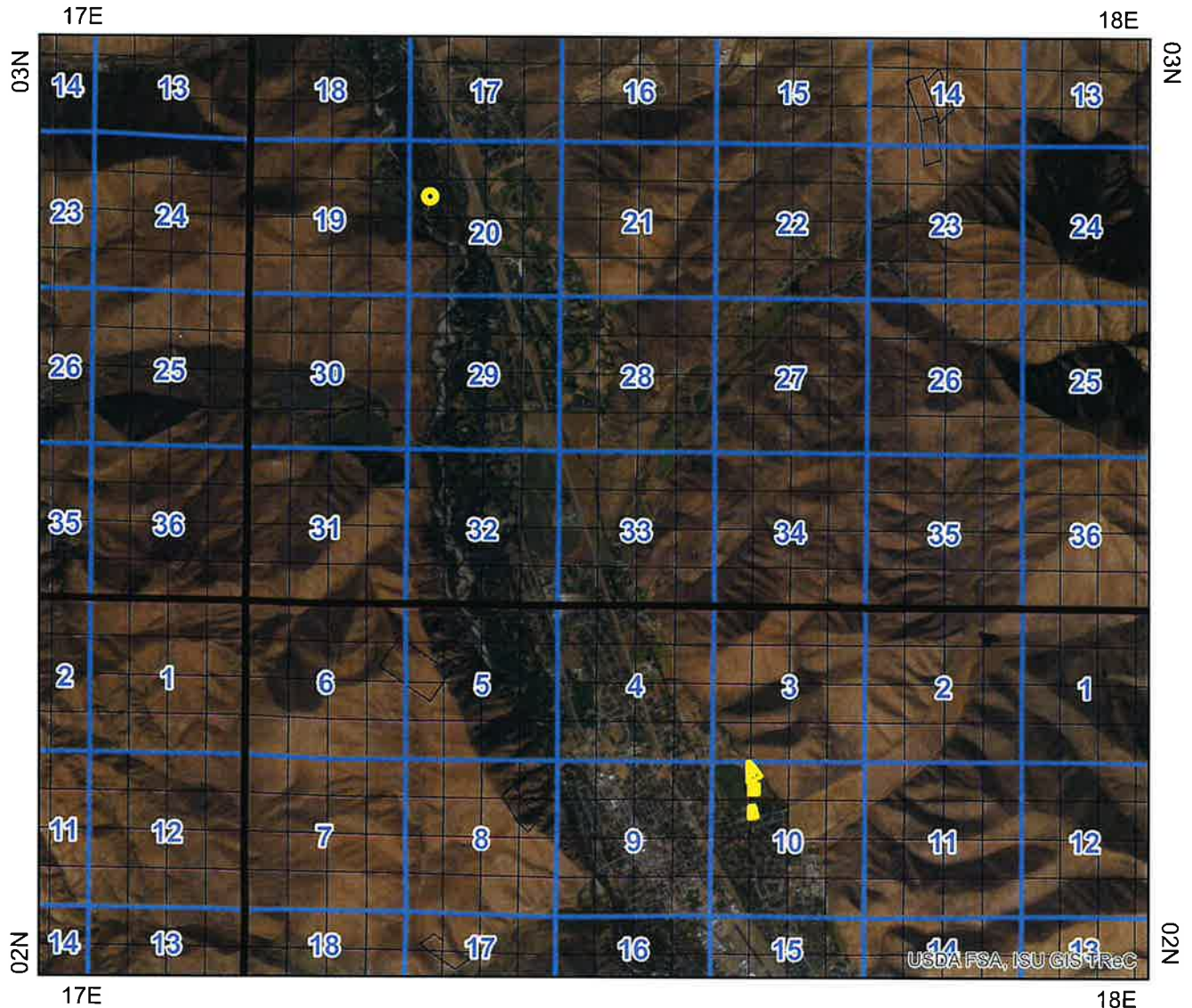
Attachment 3

State of Idaho
Department of Water Resources

Water Right 37-22118

IRRIGATION

The map depicts the place of use for the water use listed above and point(s) of diversion of this right as currently derived from interpretations of the paper records and is used solely for illustrative purposes. Discrepancies between the computer representation and the permanent document file will be resolved in favor of the actual water right documents in the water right file.



-  Point of Diversion
-  Place Of Use Boundary
-  Townships
-  PLS Sections
-  Quarter Quarters

0 0.75 1.5 3 Miles



STATE OF IDAHO)

) ss.

AFFIDAVIT

County of Blaine)

I, JAMES W. PHILLIPS, being first duly sworn, depose and state as follows:

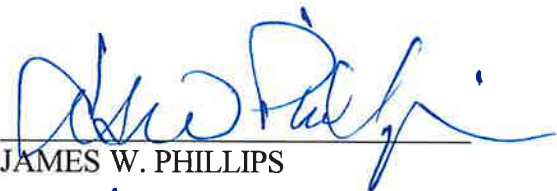
1. That I am over the age of eighteen (18) years and make this affidavit to the best of my own personal knowledge and belief.

2. Since 1978, I have irrigated at least once every five years lands within the Marvin Garden Subdivision, Blaine County, Idaho, using the surface water rights (W.T. Riley right with a priority date of March 24, 1883) conveyed to the real property through the Hiawatha Canal and high ditch of that canal.

3. Among the properties that I have irrigated is Lot 7, Block 1, Marvin Gardens Subdivision No. 1, according to the plat thereof on file in the records of Blaine County, Idaho. I have irrigated that Lot using IDWR water right 37-22118. This irrigation was most recently done in July of 2014 by means of hand line sprinkler irrigation.

4. In addition, since 1978 I have personally observed the irrigation of Lots 1 and 9, Block 1, Marvin Gardens Subdivision No. 1. To the best of my knowledge, since that date Lots 1 and 9 have been irrigated no less than once every five (5) years and that irrigation is also done with water right 37-22118.

DATED this 19th day of June, 2019


JAMES W. PHILLIPS

SUBSCRIBED AND SWORN to before me this 19th day of June, 2019.




NOTARY PUBLIC FOR IDAHO
Residing at: 1742 E. 2nd St.
My commission Expires: 8/18/21

SCANNED
SEP 02 2020



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 E Front Street, Suite 648 • PO Box 83720 • Boise ID 83720-0098

Phone: (208) 287-4800 • Fax: (208) 287-6700

Website: idwr.idaho.gov • Email: idwrinfo@idwr.idaho.gov

BRAD LITTLE
Governor

GARY SPACKMAN
Director

September 2, 2020

CHARLES M JOHNSON
11 QUIGLEY LN
HAILEY, ID 83333

**RE: WATER SUPPLY BANK LEASE CONTRACT 1034
FOR WATER RIGHTS 37-22118**

Dear Lessor:

Water rights **37-22118** was leased into the Water Supply Bank (Bank) as of January 1, 2019, in accordance with the enclosed executed lease contract. **Your water rights, as described on the lease contract, are considered leased into the Bank and should remain unused until they are formally released from the Bank.** More information and further restrictions placed on your water rights while leased can be found in conditions of acceptance of the lease contract. Read the conditions of acceptance carefully.

The rights will automatically be released from the Bank on **December 31, 2023**, unless the rights are released earlier by the Water Resource Board (Board). On behalf of the Board, the Department of Water Resources (Department) can evaluate an early release of the lease contract upon your request. To release the water rights from the Bank prior to the release date, submit a written request on the *Request to Release a Water Right from the Bank* form. This form is available on our public website at www.idwr.idaho.gov. **Please note your water rights may not be available for immediate release if they have been rented or are being considered for a future rental. Furthermore, it is at the discretion of the Department whether or not a water right can be released early from a lease contract.**

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

Sincerely,

Amanda Johnson- Veitell

for

Water Supply Bank

Enclosure: Executed Lease Contract

c: IDWR- Southern Region
Water District No. 37
Fritz Haemmerle – Haemmerle Law PLLC



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 E Front Street, Suite 648 • PO Box 83720 • Boise ID 83720-0098

Phone: (208) 287-4800 • Fax: (208) 287-6700

Website: idwr.idaho.gov • Email: idwrinfo@idwr.idaho.gov

BRAD LITTLE
Governor

GARY SPACKMAN
Director

August 20, 2020

CHARLES M JOHNSON
11 QUIGLEY LN
HAILEY, ID 83333

**RE: APPLICATION TO LEASE WATER RIGHT 37-22118 TO THE WATER SUPPLY BANK
CONTRACT 1034**

******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. I have enclosed two original Water Supply Bank Lease Contracts for your review and signature. Please sign and return ALL 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, 2023**, 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 the conditions of acceptance listed on the Lease Contract, including #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 this office at bank@idwr.idaho.gov or 208-287-4800.

Sincerely,

Water Supply Bank

Enclosures: Proposed Lease Contracts
Receipt # C107131

Memorandum

To: Water Right 37-22118

From: Justin Ferguson

Date: August 5, 2020

Re: Water Supply Bank Lease Application 1442

Purpose/Narrative: This application was received on July 2, 2019 to place a portion of water right 37-22118 into the Bank from 2019 to 2023. Through phone correspondence the applicant's representative requested we process the application for 2020-2024 however, it was later requested that the application in fact be processed for 2019-2023. As such, this lease will be for the period beginning in 2019 through the end of 2023.

The water right contains both an irrigation and stockwater component and a portion of both uses have been proposed for lease. The water right is a Big Wood River surface water right delivered via the Hiawatha Canal, to 7.6 acres of land, in the northeast quarter of Township 02N, Range 18E, Section 10, also known as the Marvin Gardens subdivision of Hailey. The place of use shape for the water right indicates it is associated with lands described as follows:

Water Right or Land Ownership	Legal Land Description	NW				Total
		NE	NW	SW	SE	
37-22118	Township 02N, Range 18E, Section 10	4.8	1.1	0.1	1.6	7.6
Charles Johnson	Lot 01, Block 01, Marvin Gardens	10.0	1.4			11.4
Wendy & Geoff Gardner	Lot 07, Block 01, Marvin Gardens			0.2	1.8	2.0
Elizabeth Simpson-Wheeler	Lot 09, Block 01, Marvin Gardens	2.3	0.3			2.6
	Lots 01, 07 & 09, Block 01, Marvin Gardens	12.3	1.7	0.2	1.8	16.0

As observed above, Mr. Johnson owns 11.4 acres of land within which he could irrigate 5.9 acres under 37-22118. His lease proposes to place into the Bank 3.5 acres of the water right, associated with Lots 07 and 09, while retaining the balance of 4.1 acres for irrigation within the 5.9 irrigable place of use on his 11.4 acre property. Prior to the evaluation of the legal quarter-quarters associated with the lots, a special analysis was done finding an insufficient amount of acreage and an information request was sent. Based on the findings of the legal information pertaining to the lots, the applicant was contacted and advised to disregard the request.

Authority to File: This right was decreed to Mr. Johnson through the SRBA. Adjudication backfile information indicates lots 07 and 09 of the Marvin Gardens subdivision were not owned by Charles Johnson when the water right was claimed by, and subsequently decreed to him. In recognition that he was decreed the portions of water right 37-22118 associated with lots 07 and 09, and that he retains ownership of the portion of the water right appurtenant to his property on lot 01 of Marvin Gardens subdivision, there appear to be no concerns about his authority to file.

Water Right Validity/Forfeiture Evaluation: This lease proposes a lease of the irrigation portions of the water right associated with lots 07 and 09, Block 01 of the Marvin Gardens subdivision. The water right was decreed in 2010. The applicant indicates that water is diverted into the Hiawatha Canal Company system

and delivered to the place of use. Initially the validity of the right was uncertain so a letter requesting additional information was sent to the applicant on February 27, 2020. No response was received but further evaluation revealed there was enough evidence to show the right may be valid. Review of satellite imagery confirms vegetation in the place of use associated with lots 07 and 09 in recent years.

The lower parcel is owned by Ms. Bevins-Gardener and does not feature any other water rights other than 37-22118, held by Mr. Johnson. Vegetation can be observed however, it appears a portion of the acreage has been developed into a residence while another portion has been paved over and can no longer be irrigated. As part of the lease application package an affidavit from James Phillips was submitted as President of the Hiawatha Canal Company, in which, Mr. Phillips affirms that he irrigated lot 07, block 01 of the Marvin Gardens subdivision, during 2014. Lot 07 is calculated to be 2.0 acres in size, of which 1.7 acres can be irrigated under 37-22118. Provided that 1.7 acres was irrigated by Mr. Phillips in 2014, there are no concerns about the validity of the portion of the water right associated with lot 07, block 01 of the Marvin Gardens subdivision.

Additionally, in 2019, a water right change in ownership for 37-22118 was filed by Elizabeth Simpson, the owner of lot 09, block 01, of the Marvin Gardens subdivision. Ms. Simpson affirmed that she has not allowed Hiawatha Canal surface water to be applied to lot 09 for more than five years. However, Ms. Simpson uses ground water right 37-8428 to irrigate her property. The irrigation places of use for water rights 37-8428 and 37-22118 overlap and irrigation under 37-8428 has protected from forfeiture the portion of water right 37-22118 associated with lot 09, block 01 of the Marvin Gardens subdivision. No concerns about the validity of the portions of water right 37-22118 proposed for lease.

Injury Evaluation: No injury is apparent through the lease and proper rental review should guard against injury.

The water is delivered through the Hiawatha Canal system so a portion will be retained for conveyance loss. At this time, per previous administrative actions and the request of the canal company, that portion is determined to be 20% of the volume of the water right.

Enlargement of Use: No enlargement is evident through the lease alone. However the portion of 37-22118 associated with lot 09, block 01 of the Marvin Gardens subdivision has not been used for more than five years, and instead, this area has been irrigated with ground water right 37-8428. It is assumed that the overall consumptive use of water for irrigation of lot 09 is now largely, and perhaps exclusively, accomplished from ground water. To avoid enlargement in overall water use within the area, it may be necessary to make the irrigation extent of water use under 37-22118 associated with lot 09 unrentable.

Local Public Interest: Staff are unaware of any local public interests that are averse to the lease.

Beneficial Use/Conservation of Water Resources: The lease appears consistent with the conservation of water resources in Idaho.

Department/Watermaster Comments: Watermaster and IDWR Southern Region comments were requested May 28, 2020. As of the date of this memo, no comments have been received.

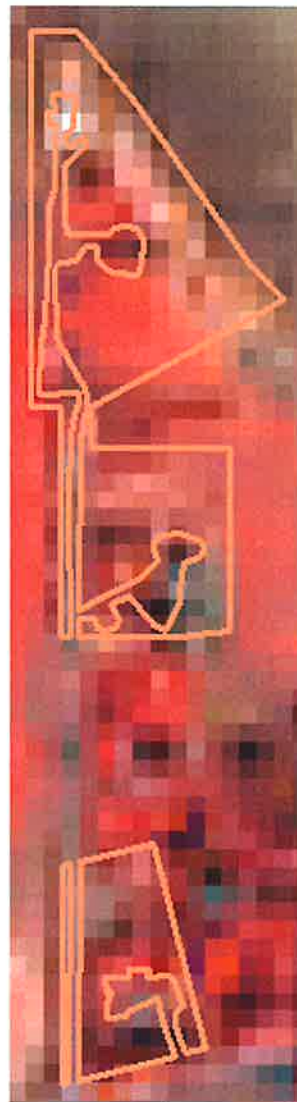
Water Supply Bank Evaluation: Based on the information presented by the applicant, staff recommend the application be approved.

Figure 1. Water right place of use outlined in orange with observed irrigated acres in green.



Some acreage has been paved and can no longer be irrigated.

Figure 2. Water right place of use outlined in orange. 2017 image – Vegetation denoted in red



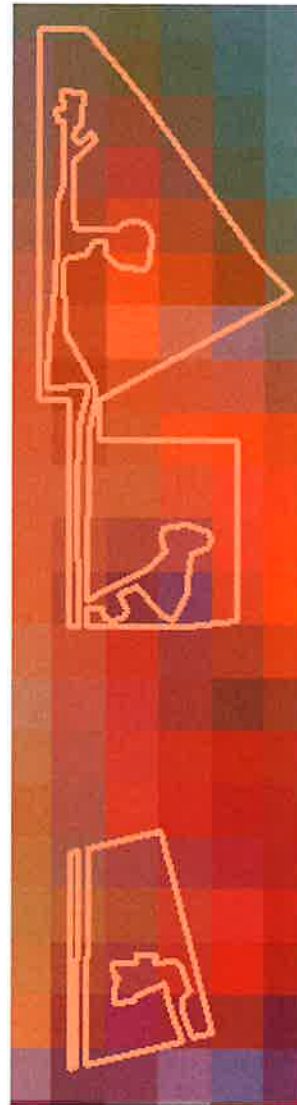
Observed vegetation along canal possibly riparian however, at this time, cannot be verified.

Figure 3. Water right place of use outlined in orange. 2016 image – Vegetation denoted in red



Observed vegetation along canal possibly riparian however, at this time, cannot be verified.

Figure 4. Water right place of use outlined in orange. 2014 image – Vegetation denoted in orange



Vegetation along canal appears ancillary and not intentional however, as vegetation has occurred, water right can remain valid.



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 E Front Street, Suite 648 • PO Box 83720 • Boise ID 83720-0098

Phone: (208) 287-4800 • Fax: (208) 287-6700

Website: idwr.idaho.gov • Email: idwrinfo@idwr.idaho.gov

BRAD LITTLE
Governor

GARY SPACKMAN
Director

February 27, 2020

CHARLES JOHNSON
11 QUIGLEY LN
HAILEY, ID 83333

RESPONSE DEADLINE:
March 28, 2020

RE: Action Required on WSB Lease Application 1442

Dear Applicant,

The Department of Water Resources (Department) has conducted a review of your application to lease water right 37-22118 to the Water Supply Bank and has determined additional information is required to continue processing of lease application 1442. An affidavit was included with the application that offers some evidence irrigation had occurred in lots 1, 7, and 9 of the Marvin Gardens subdivision. A preliminary review using aerial imagery indicates less than 7.6 acres within the place of use has been irrigated within last five years. To be considered complete, Water Supply Bank rule 25.02.c requires that a lease application include information that a water right has not been lost through abandonment, or forfeiture as defined by Section 42-222(2), Idaho Code. Please provide information demonstrating the right is valid and therefore acceptable for lease into the Water Supply Bank.

Please provide information within 30 days (deadline of March 28, 2020), so that processing of application no. 1442 can continue. If the information has not been received by the deadline, we will return your lease application.

If you have any questions, please contact me at (208) 287-4936.

A handwritten signature in black ink, appearing to be 'JF' or 'Justin'.

Justin Ferguson

cc – Fritz Haemmerle

Ferguson, Justin

From: Buyer, Remington
Sent: Tuesday, September 24, 2019 4:29 PM
To: Ferguson, Justin
Subject: FW: Water right

Justin, please include this email correspondence in your review of application 1442, and adjust the lease dates to reflect a term of 2019-2023.

Thanks.

From: Fritz Haemerle [mailto:fxh@haemlaw.com]
Sent: Tuesday, September 24, 2019 3:45 PM
To: Buyer, Remington <Remington.Buyer@idwr.idaho.gov>
Subject: RE: Water right

Buyer:

On application 1442, let's go with 2019.

Fritz X. Haemmerle
HAEMMERLE LAW, P.L.L.C.
P.O. Box 1800
Hailey, ID 83333
Tel: (208) 578-0520
FAX: (208) 578-0564

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From: Buyer, Remington [mailto:Remington.Buyer@idwr.idaho.gov]
Sent: Wednesday, September 04, 2019 10:05 AM
To: Fritz Haemerle
Cc: Webster, Clay
Subject: RE: Water right

Hi Fritz,

The Bank's focus is to clear out all 2019 lease and rental applications prior to the end of the year. The term for the lease of 37-22118 (WSB Application Number 1442) was five years, from 2020 through 2024. If you'd like, we can adjust the lease term to be from 2019 through 2023 and then slot Application 1442 into the queue to be processed this year.

Please confirm this is desired for Application 1442?

Thanks,

Remington

(208) 287-4918

From: Fritz Haemerle [<mailto:fxh@haemlaw.com>]
Sent: Friday, August 30, 2019 1:58 PM
To: Webster, Clay <Clay.Webster@idwr.idaho.gov>
Subject: RE: Water right

Clay:

I understand that if the right goes into the bank on January 1, 2020, the right will not be forfeited. However, for comfort, can I amend the lease to begin in 2019?

Please advise. Thanks.

Fritz X. Haemmerle
HAEMMERLE LAW, P.L.L.C.
P.O. Box 1800
Hailey, ID 83333
Tel: (208) 578-0520
FAX: (208) 578-0564

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From: Webster, Clay [<mailto:Clay.Webster@idwr.idaho.gov>]
Sent: Friday, August 30, 2019 10:54 AM
To: Fritz Haemerle
Cc: Judd, Debbi
Subject: RE: Water right

Mr. Haemerle,

This application came in with the requested start of 2020. These are placed on hold until the department starts processing them for the next season in November. Please see attached.

Sincerely,
Clay Webster
Water Rights Supervisor
clay.webster@idwr.idaho.gov
208-287-4910
Idaho Department of Water Resources (IDWR)

From: Judd, Debbi
Sent: Friday, August 30, 2019 10:30 AM
To: Fritz Haemerle <fxh@haemlaw.com>
Cc: Webster, Clay <Clay.Webster@idwr.idaho.gov>
Subject: RE: Water right

Fritz,

I am forwarding your question to Clay Webster.

Thanks,

Debbi

From: Fritz Haemerle [<mailto:fxh@haemlaw.com>]

Sent: Friday, August 30, 2019 10:27 AM

To: Judd, Debbi <Debbi.Judd@idwr.idaho.gov>

Subject: Water right

Debbi:

I submitted a Lease Application for water right 37-22118 on July 2nd. It still looks like it is at the bottom of the list and is listed as "on hold." Is there some problem I can address?

Thanks.

Fritz X. Haemmerle
HAEMMERLE LAW, P.L.L.C.
P.O. Box 1800
Hailey, ID 83333
Tel: (208) 578-0520
FAX: (208) 578-0564

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HIAWATHA CANAL

P.O. Box 1604 • Hailey, ID 83333

June 19, 2019

Idaho Water Bank
322 E. Front St.
P.O. Box 83720
Boise, ID 83720-0098

Re: Request to Water Bank 37-22118 (Charles and Connie Johnson)

Dear Sir or Madam:

The purpose of this letter is to respond generally to water rights being leased to the Water Bank, which are conveyed in the Hiawatha Canal ("Canal") by the Hiawatha Canal Company, a.k.a. The Hiawatha Canal Water Users Association of Lateral or Laterals ("Canal Company"). For the reasons outlined below and on the conditions requested, the Canal has no objection to the aforementioned water rights being placed into the Water Bank.

The Hiawatha Canal Company is concerned about the amount of water being removed from the Canal and placed in the Water Bank by various water right holders. Generally, at this time, the Canal Company does not object to the water rights being placed in the Water Bank provided that twenty-percent (20%) of the right be left in the Canal as conveyance loss. I suggest that the Department place a condition on the leases to this effect.

Providing you some historical perspective, the Canal Company filed for mitigation (conveyance loss) rights in the adjudication for rights that had been forfeited or abandoned out of the Canal. The Department agreed that the conveyance loss in the Canal was twenty-percent (20%), and therefore, entered recommendations accordingly. See e.g., water rights 37-22630, 37-22631, 37-22632 and 37-22633. This conveyance has been recognized by the Idaho Department of Water Resources in similar transfers. Leaving twenty-percent (20%) of the leased rights in the Canal will insure that all rights in the Canal continue to be delivered without injury to water right holders in the Canal.

As a condition of being leased, the Canal Company requests:

1. The Canal Company does not presently object to the aforementioned water rights being placed in the Water Bank, provided that twenty-percent (20%) of the right is left in the Canal as conveyance loss; and
2. The Canal Company would like to be notified if the water rights are eventually released from the Water Bank, or if the Water Rights are being leased again to the Water Bank after the expiration of the lease period.

Thank you in advance for responding to this letter and addressing our concerns. If you have any questions, please do not hesitate to call me.

Sincerely,

HIAWATHA CANAL COMPANY



James W. Phillips, President

FXH: fxh
cc: client

HAEMMERLE LAW, P.L.L.C.

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

JUL 02 2019

DEPARTMENT OF
WATER RESOURCES

July 1, 2019

Idaho Dept. of Water Resources
c/o Water Bank
P.O. Box 83720
Boise, ID 83720-0098

Re: *Request to Water Bank Portion of 37-22118*
Applicant: *Charles and Connie Johnson*

To Whom It May Concern:

Please find enclosed my client's Application to lease a portion of water right 37-22118 to the Water Bank. I have also enclosed: (1) a Lease Application; (2) W-9 Form; (3) Affidavit of James W. Phillips showing water use; (4) a letter from the Hiawatha Canal showing no objection; and (5) a check for \$250.00 for the lease fee.

If you require any further information, please advise.

Sincerely,

HAEMMERLE LAW, P.L.L.C.



Fritz X. Haemmerle

FXH: fxh
Encl.
cc: client