

RECEIVED

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCESDEC 01 2021
DEPARTMENT OF
WATER RESOURCES

WATER SUPPLY BANK LEASE CONTRACT No. 1344

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

LESSOR: FRANCIS LIVINGSTON
110 ELDERBERRY LN
BELLEVUE, ID 83313

SUPPORT DATA
IN FILE # 37-21616

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 December 30, 2020.
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)
37-21616	7/1/1887	BIG WOOD RIVER, tributary to MALAD RIVER	0.16	Not Stated	3.3
37-23107	7/25/1966	GROUND WATER	0.13	11.5	3.3
Combined Limit Totals			Not Stated	Not Stated	3.3
Combined Lease Totals			0.29	11.5	3.3

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)
37-21616	0.18	11.6	3.3	0.06	3.50
37-23107	0.13	11.5	3.3	0.04	3.48
Combined Limit Totals	0.29	11.6	3.3	0.06	3.50

* The water right elements rentable have been reduced from the water right elements leased to account for a field headgate standard of 3.5 af/ac.

WATER SUPPLY BANK LEASE CONTRACT No. 1344

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, 2021 to December 31, 2025. This Lease shall bind the parties and take effect when both parties have signed it.
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. 1344

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

LESSOR: FRANCIS LIVINGSTON

110 ELDERBERRY LN

BELLEVUE, ID 83313

By

Title

Date

Francis Livingston
properly owner

11/23/21

IDAHO WATER RESOURCE BOARD

322 East Front Street

P.O. Box 83720

Boise, ID 83720-0098

By

Brian Patton
Brian Patton, Acting Administrator
Idaho Water Resource Board

Date

12/2/21

Lease approved by IDWR

Flumma

Date

12/2/21

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

WATER SUPPLY BANK LEASE CONTRACT No. 1344

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): 37-21616

BIG WOOD RIVER NENE Sec. 35 Twp 02N Rge 18E BLAINE County

Source and Location of Point(s) of Diversion for Water Right No(s): 37-23107

GROUND WATER NENE Sec. 35 Twp 02N Rge 18E BLAINE County

Water Right	Beneficial Use	Season of Use			Diversion Rate (CFS)	Volume (AF)
		From		To		
37-21616	IRRIGATION	04/15	to	10/31	0.16 cfs	Not Stated
37-23107	IRRIGATION	04/01	to	11/01	0.13 cfs	11.5 AF
37-21616	STOCKWATER	01/01	to	12/31	0.02 cfs	Not Stated
Totals:					0.29 cfs	11.5 AF

PLACES OF USE TO BE IDLED UNDER THIS LEASE: IRRIGATION and 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	35	3.3																3.3

Total Acres: 3.3

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.

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

WATER SUPPLY BANK LEASE CONTRACT No. 1344

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. At the time of this approval, this water right is within State Water District No. 37.
13. Rights 37-23107 and 37-21616 when combined shall not exceed the irrigation of 3.3 acres.
14. The quantity of water under this right for stockwater use shall not exceed 13,000 gallons per day.
15. The quantity of water decreed for this water right for stockwater use is not a determination of historical beneficial use.
16. Place of use is located within Lots 1-2, Blk. 3; Broadford Polo Subdivision.
17. The right holder shall make full beneficial use of all surface water available to the right holder for irrigation of lands within the authorized place of use for this right. The right holder may divert ground water under this right to irrigate land with appurtenant surface water rights when the surface water supply is not reasonably sufficient to irrigate the place of use for this water right or is not available due to drought, curtailment by priority, or the seasonal startup and shutoff or maintenance schedule for canal company deliveries. The right holder shall not divert ground water for irrigation purposes under this right if use of the surface water supply is intentionally discontinued or reduced (for example abandoned, forfeited, sold, disallowed by court decree, or leased to the Water Supply Bank), or is not deliverable due to non-payment of annual assessments, without an approved transfer pursuant to Section 42-222, Idaho Code, or other Department approval.
18. Water right 37-23107 when combined with all other rights shall provide no more than 3.5 afa per acre at the field headgate for irrigation of the place of use.

SEP 29 2021

DEPARTMENT OF
WATER RESOURCESSTATE OF IDAHO
WATER RESOURCE BOARDAPPLICATION TO SELL OR LEASE A WATER RIGHT
TO THE WATER SUPPLY BANKDesignated Applicant FRANCIS LIVINGSTON
(Select one owner – see item 1A on the application)Water Right No. 37-23107
(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 \$ 250-Received By: LuDate Received: 9-29-21Receipt # C111040W-9 received? Yes ☒ No ☐ (Route W-9 to Fiscal)Name on W-9: Francis E. Livingston

2148

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 FRANCIS LIVINGSTON
Mailing Address 110 ELDERBERRY LN. BELLEVUE, ID 83813
Street City State Zip Code
Email Address franciselivingston@gmail.com Phone Number 208-721-1141

☒ 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 _____ Organization _____
Professional Title _____ Email Address _____
Mailing Address _____ Phone Number _____

☐ 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.

BROADFORD SLEW (diverted from BIGWOOD RIVER)

- 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. RIGHT # 37-21616 HAS BEEN BANKED

- FOR 5 YRS THAT WILL NOT INCREASE OUR USE OF WATER FROM OUR DOMESTIC WELL & RIGHT 37-23107
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. IT HAS BEEN BANKED

- 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: 2021 to 2026 (maximum lease period 5 calendar years).
(Year) (Year)

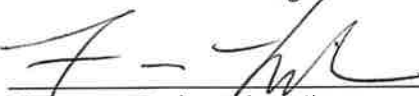
B. Show the minimum payment acceptable to the seller/lessor. The minimum payment may be shown as the "current rental rate" as established by the IWRB. Include the method of determining the minimum payment if other than the current rental rate.

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

Francis Livingston 9/24/21
Printed Name Date

Signature of Authorized Representative

Printed Name

Date

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

**STATE OF IDAHO
WATER RESOURCE BOARD**

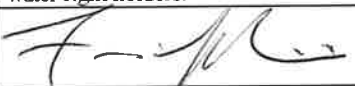
ATTACHMENT 1A

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). 37-21616, 37-23107

	Designated Applicant	Applicant #2	Applicant #3
Name	FRANCIS LIVINGSTON		
Mailing Address	110 ELDERBERRY LN BELLEVUE, ID. 83313		
Phone Number	208-721-1141		
Email Address	franciselivingston@gmail.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
Department of Water Resources

Water Right
37-21616

STOCKWATER

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 0.0375 0.075 0.15 Miles





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 Gary Spackman

December 2, 2021

FRANCIS LIVINGSTON
110 ELDERBERRY LN
BELLEVUE, ID 83313

**RE: WATER SUPPLY BANK LEASE CONTRACT 1344
FOR WATER RIGHTS 37-21616 & 37-23107**

Dear Lessor:

Water rights **37-21616 & 37-23107** were leased into the Water Supply Bank (Bank) as of January 1, 2021, 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, 2025**, 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-Veibell

for
Water Supply Bank

Enclosure: Executed Lease Contract

c: IDWR- Eastern Region
Water District No. 120



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 Gary Spackman

November 22, 2021

FRANCIS LIVINGSTON
110 ELDERBERRY LN
BELLEVUE, ID 83331

**RE: APPLICATION TO LEASE WATER RIGHTS 37-21616 & 37-23107 TO THE WATER SUPPLY
BANK CONTRACT 1344**

******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, 2025**, 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,

Amanda Johnson-Veibell

for
Water Supply Bank

Enclosures: Proposed Lease Contracts

MEMORANDUM FOR APPLICATION # 1913

To: Water Rights 37-21616 & 37-23107
From: Tyler Smith
Date: November 4, 2021
Re: Review & Analysis of Application to Lease Water to the State Water Supply Bank

Purpose/Narrative: An application was received by the Department on December 30, 2020 by Francis Livingston (Applicant) offering the entirety of water right 37-21616 for lease to the Water Supply Bank (Bank). The lease is proposed for 5 years and would end 12/31/2025.

During processing, Jean Hersley discovered that water right 37-23107 overlaps the place of use for 37-21616 and is a supplement groundwater right to 37-21616. On July 21, 2021 the Department sent a letter to the applicant informing them that in order to accept water right 37-21616 into the Bank, water right 37-23107 needs to be leased to the Bank as well. On September 29, 2021 the applicant submitted an application to lease the entirety of water right 37-23107 to the Bank for 5 years. The original lease application for water right 37-21616 is #1913, and the newer lease application for water right 37-23107 was #2148. Water right 37-23107 was added to application #1913, and application #2148 was changed to "processed" with the comment to see application #1913.

Authority to File: The applications for water right 37-21616 and water right 37-23107 were both signed by Francis Livingston. Current water right records show that both rights are currently owned by Francis and Sue Rother, with name connector "and". Attachment 1A for the application for water right 37-21616 was also signed by Sue Rother, indicating their consent.

Current tax lot data indicates the applicants are the owner of the property at the place of use. The point of diversion for water right 37-21616 is not located on the applicant's property, but water right backfile suggests a historic use at this point of diversion.

Water Right Validity: Water right 37-21616 was previously leased to the Bank from 1/1/16-12/31/2020, and water right 37-23107 is a supplemental groundwater right. 37-21616 was originally placed into the Bank at the suggestion of Water District 37 Watermaster Kevin Lakey because the right had not been used for 4 consecutive years. The right was placed into the Bank as a valid defense to forfeiture, and since it was applied to be re-leased before the right came out of the Bank, there are not validity concerns.

Although imagery suggests some irrigation was occurring during the time the right was in the Bank, the applicant stated that the water table is high at the place of use, so it stays green well into the dry season. The property borders the Big Wood River to the North and the Broadford Slough to the South, and looking at adjacent properties, this appears to be true. No concerns with validity of the water right and portion offered to the bank.

Injury to Other Water Rights: Lease of this water right would not cause injury to other water rights. Proper review to prevent injury if rented, with special attention to the high water table remark in the previous section.

Enlargement of Use: Water rights 37-21616 and 37-23107 have a combined use limit of 3.3 acres of irrigation. Both rights are proposed to be leased to the Bank, and the place of use will not continue to receive water from any other source.

Local Public Interest: Review staff has no information to suggest this application is inconsistent with the local public interest.

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

Department Staff or Watermaster Comments: Water right 37-23107 was originally put in the Bank at the direction of Water District 37 Watermaster Kevin Lakey. Request for comments from WD 37 and IDWR Southern Region were sent on November 5, 2021. No response was received, so it is assumed that they have no concerns with the lease.

Water Supply Bank Evaluation: Based on the information presented by the applicant and pending any concerns or comments, staff recommend the lease proposal be approved for the 2021-2025 irrigation seasons.



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

07/21/21

FRANCIS LIVINGSTON
110 ELDERBERRY LN
BELLEVUE ID 83313

COPY

Re: Application to lease Water Right no. 37-21616

Dear Applicant,

We received an application to lease water right no. 37-21616 into the water supply bank. This water right authorizes irrigation of 3.3 acres and stockwater uses from the Big Wood River. The 3.3 acres described on water right no. 37-21616 are also described on water right no. 37-23107. Water right no. 37-23107 authorizes the irrigation of the same 3.3 acres from ground water. Water right 37-23107 is considered a supplemental ground water right, meaning any surface water for the same use must be used first and the ground water right cannot be used unless the surface water is unavailable. A condition of water right no. 37-23107 says in pertinent part:

The right holder shall not divert ground water for irrigation purposes under this right if the surface water supply is intentionally discontinued or reduced (for example abandoned, forfeited, sold, disallowed by court decree, or *leased to the Water Supply Bank*)...emphasis added

Since both water rights are for the same 3.3 acres and the ground water can't be used if the primary surface water is leased into the Water Supply Bank, water right no. 37-21616 can't be accepted into the Water Supply Bank unless water right no. 37-23107 is also leased into the Bank. I recognize that right no. 37-21616 has been accepted for lease into the Water Supply Bank previously and considered un-rentable. This past policy of accepting primary surface water rights without also accepting for lease the supplemental ground water rights is no longer appropriate. It creates a situation where the unauthorized use of ground water could occur enlarging the water rights

Enclosed with this letter, I have included the application to sell or lease a water right to the water supply bank form that is required for water right no. 37-23107. Once the form is received along with an additional \$250.00 fee water right no. 37-23107 can be added to contract no. 1344. Once executed this contract will be active starting January 1, 2021 and continue until December 31, 2025, both rights will be leased into the Bank for that period of time.

I apologize for the considerable delay in processing that has occurred for this application. I have many reasons why it has taken me so long to send this letter but none of them really justify the delay that has occurred, for which I sincerely apologize. Once the form and fee have been received I will do my best to issue water supply bank contract no. 1344 as quickly as possible.

Phill Hummer



Water Rights Supervisor
IDWR State Office
(208) 287-4925

Enclosure: Application to Sell or Lease a Water Right to the Water Supply Bank Form

WATER SUPPLY BANK
Lease Review Checklist
Applicant(s) Name: Francis Livingston

Memo Date: February 19, 2021

Water Right Number(s): 37-21616

Reviewers Name: Jean

Quick Tools

Decreed Year	No Forfeiture Concerns Thru:
2011	2017
2012	2018
2013	2019
2014	2020
2015	2021

		Check box		COMMENTS/CONCERNS:
1	Fill out WSB Data Entry Checklist for Leases (Front of File)	x		
2	Reason for lease of water rights (Brief description of lease proposal in narrative)			
	Portion of right			
	All of right	x		
3	Check GWMA/CGWA/ADC and basin 63 areas of concern (note area in comments)			
		Yes	No	
4	Rentable? (If no explain in comments or narrative)	x		
5	Authority to file			
	Current owner or designated applicant	x		
	SOS Web site checked for business entity		na	
	Other (explain in comments)			
6	Water Right validity			
	Decreed/Licensed/Statutory claim date (write in comments section)			2010
	Past irrigation to ensure forfeiture is not an issue if decreed or licensed over 7 years ago (consider transfers that changed the POU, rentals to the POU etc.)			
	Has this right previously been leased to the bank or in CREP?	x		2016-2020
7	Injury to other water rights			
	If the POD is through a delivery entity, was consent provided?		na	
	If the POD is through a delivery entity, was holdback required? (percentage in comments)			%
	Any other concerns		x	
8	Enlargement concerns	Check box		
	Complete a POU comparison overlap analysis	x		
	Complete a combined limits review	x		
	Complete POD overlap analysis (if there is an overlap add condition to lease)	x		
		Yes	No	
	Are there overlapping rights that need to be placed in the bank also?		x	
	Will the place of use continue to receive water? (if yes explain in comments)			It shouldn't
9	Local Public Interest			
	Does the processor know of any problems this action will cause for the local public?		x	
10	Have you contacted regional office and watermaster for comment/concerns?	x		
	Send the watermaster comment request form or e-mail request	x		
11	Area Headgate requirement (write in Comments)			3.5
12	Is water right involved in any other department action? Pull file and check database () Ownership Change () Transfer () Mitigation () Other - Explain in comments		x	

Narrative: The Department received this application on December 30, 2020. Additional information was requested and received on February 3, 2021. The applicant wishes to place the entire right in the Bank. This right was decreed in 2010. It was placed in the Bank in 2016-2020 as unrentable due to a overlap with 37-2639B. In 2018, a transfer splitting 37-2639B into 37-2639B and 37-23107 was approved. 37-23107 is appurtenant to the same land but is supplemental to the surface water and has overlapping conditions with 37-21616, the right being offered to the Bank. These rights have not been used together so 37-23107 does not need to be leased to the Bank. According to the applicant, the water table is high where the property sits, so it stays green well into the dry season. This right is currently within WD 37.



Sue Rother <suerother1@gmail.com>

208-721-1143

Fwd: Water Supply Bank Lease for 37-21616

1 message

franciselivingston@gmail.com
 <franciselivingston@gmail.com>
 To: suerother1@gmail.com

Wed, Jan 20, 2021 at 1:59 PM

RECEIVED
 FEB 03 2021
 DEPARTMENT OF
 WATER RESOURCES

Sent from my iPhone

Begin forwarded message:

From: "Hersley, Jean" <Jean.Hersley@idwr.idaho.gov>
Date: January 20, 2021 at 1:46:56 PM MST
To: "franciselivingston@gmail.com" <franciselivingston@gmail.com>
Subject: Water Supply Bank Lease for 37-21616

The Department of Water Resources is in the process of reviewing your application to place water right 37-21616 in the Water Supply Bank (Bank). During this review, we found that water right 37-23107 (ground water source) is also appurtenant to your property and there are combined conditions with water right 37-21616 (Big Wood River source). Have these two water rights ever been co-mingled or used together? If they have, you will need to place 37-23107 in the Bank also.

NO, THEY HAVEN'T BEEN USED TOGETHER.

There was also some information missing on your application. Please fill in the missing information below:

4A. Is the diversion works or system owned or managed by an irrigation district or water delivery company? You marked Yes. The Department will need consent from the irrigation district to place this right in the Bank.

YES, IT'S DISTRICT 37 (OFFICE IN SHOSHONE)

4B. Please provide a description of the current water diversion and delivery system. IT IS A DIVERSION FROM THE BIG WOOD RIVER THAT BORDERS OUR PROPERTY

4C. Describe any other rights used for the same purpose at the same place of use as the water right being offered to the Bank.

NONE OTHER THAN OUR ~~WELL~~ DOMESTIC
WELL WATER

4D. Are any of the water rights identified in Section 4C stacked with the water right proposed for lease? You marked 'No' but this right is stacked with 37-23107.

YES ~~NO~~

4E. Will the present place of use continue to receive water from any other source? You marked 'No', but in our aerial imagery it appears you have been irrigating some of your property. Explain the relationship between the different water sources and how enlargement of the authorized use will not occur if this water right is leased.

NO, ~~THE~~ THE WATER TABLE IS HIGH WHERE
OUR PROPERTY SITS, SO IT STAYS GREEN WELL
INTO THE DRY SEASON

4G. Has any portion of this water right undergone a period of five or more consecutive years of non-use? You marked 'No'. This right has been in the Bank for 5 years.

YES, FOR 5 YEARS

Please respond within 14 days or the Department may return your application unprocessed. Thank you.

Jean Hersley

Technical Records Specialist II

Idaho Dept Water Resources

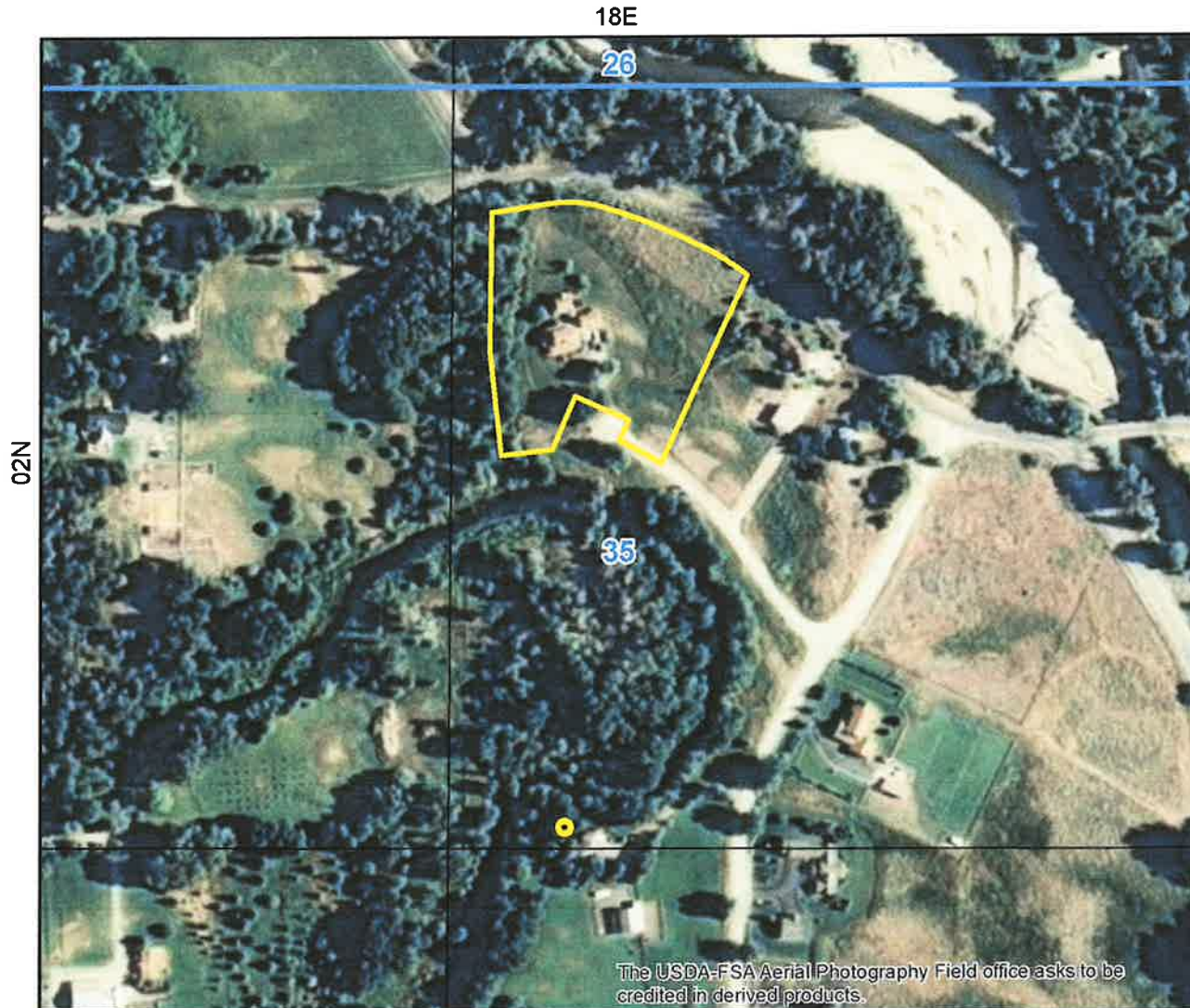
(208) 287-4942

State of Idaho
Department of Water Resources

Water Right
37-21616

IRRIGATION & STOCKWATER

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 0.0375 0.075 0.15 Miles





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BRAD LITTLE
Governor

GARY SPACKMAN
Director

January 4, 2021

FRANCIS LIVINGSTON
110 ELDERBERRY LN
BELLEVUE ID 83313

**RE: ADDITIONAL INFORMATION REQUEST FOR PROCESSING APPLICATION TO LEASE
WATER RIGHT NO(S) 37-21616 TO THE WATER SUPPLY BANK**

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

Dear Applicant:

The Idaho Department of Water Resources (Department) acknowledges receipt of the application to lease the above referenced water right to the Idaho Water Resource Board's Water Supply Bank (Bank). The Department will review your application as resources allow.

If the right is determined to be eligible for acceptance into the Bank, the right will be entered as of the date of receipt of the application. The acceptance date may be adjusted when additional information is required. A preliminary review of your application has been completed and it has been determined that additional information is required to continue processing.

Please provide the following information or request withdrawal of your application within 30 days of the date of this letter or the application will be returned unprocessed and your application fee will be refunded:

- **Francis & Sue need to Sign the Attachment 1A (attached)**

The department will continue processing your application once you have submitted the requested information. Water right forms are available from the Department's website at www.idwr.idaho.gov. If you have any questions, please contact this office at (208) 287-4800.

Sincerely,

Jean Hersley

For
Water Supply Bank

Enclosure(s): Attachment 1A