

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

WATER SUPPLY BANK RENTAL AGREEMENT No. 366

RECEIVED

FEB 13 2020

DEPARTMENT OF
WATER RESOURCES

This is to certify that:

RICHARD AND JILL SMITH
PO BOX 8
REXBURG, ID 83440

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

Summary of Water Rights or Portions Rented from the Bank

Water Right No.	Priority Date	Source	Diversion Rate (CFS)	Diversion Volume (AF)	Acres (AC)	Rate Per Acre (CFS/AC)	Volume Per Acre (AF/AC)
22-2184	10/3/1960	GROUND WATER	0.09	38.2	10.9	0.01	3.5
22-2230	9/18/1963	GROUND WATER	0.05	18.2	5.2	0.01	3.5
22-7075	7/5/1973	GROUND WATER	0.17	68.6	19.6	0.01	3.5
22-11147	4/1/1962	GROUND WATER	0.02	5.9	1.7	0.01	3.5
22-11149	4/15/1981	GROUND WATER	0.02	6.1	1.8	0.01	3.4
Combined Rental Totals			0.34	137.0	39.2	0.01	3.5

Term of Rental: This rental agreement shall take effect when all parties have signed it and shall continue in effect until December 31, 2020. Use of rental water shall be authorized as of either the date this rental agreement takes effect or the first day of the rental season of use, in 2019, whichever occurs last.

Annual Rental Fee:

2019 - 2020: \$274.00 per year

The full fee for the rental of the above-described right(s) is \$548.00, which is \$274.00 per year, for 2019 and 2020. The rental fee includes an administrative fee of \$274.00 for 2019 and 2020. Note that the renter is obligated to pay only the administrative fees associated with the water right(s): 22-2184, 22-2230, 22-7075, 22-11147, 22-11149.

Total Water Use Authorized Under Rental Agreement

Beneficial Use	Diversion Rate (CFS)	Diversion Volume (AF)	Acres (AC)	Rate/Acre (CFS/AC)	Volume/Acre (AF/AC)
IRRIGATION	0.34	119.0	34.0	0.01	3.5
Combined Total	0.34	119.0	34.0	0.01	3.5

** The authorized water usage reflects a reduction from the water right elements rented, to account for a higher per-acre diversion rate, proportionate to the water rights already diverted from the point of diversion associated with this rental, at fields adjacent the rental place of use.*

Detailed water right conditions are attached.


SUPPORT DATA

IN FILE # 22-2184

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

WATER SUPPLY BANK RENTAL AGREEMENT No. 366

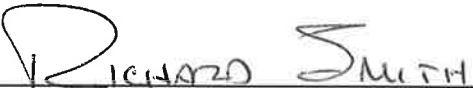
The undersigned renter agrees to use the water rented under this agreement in accordance with the Water Supply Bank rules and in compliance with the limitations and conditions of use described in this agreement:



Signature of Renter

2/9/20

Date



Printed Name

Title

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

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

By 

BRIAN PATTON, Acting Administrator
Idaho Water Resource Board

Date 4/27/2020

Rental approved by IDWR 

Date 4/27/2020

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

WATER SUPPLY BANK RENTAL AGREEMENT No. 366

WATER USE DETAILS

LOCATION OF POINT(S) OF DIVERSION

GROUND WATER NWSW Sec. 32, Twp 06N, Rge 40E, MADISON County

BENEFICIAL USE
IRRIGATION

DIVERSION RATE
0.34 CFS

VOLUME
119.0 AF

SEASON OF USE

Water Right No.	From	To
22-2184	4/1	10/31
22-2230	4/1	10/31
22-7075	5/1	11/1
22-11147	4/1	10/31
22-11149	4/1	10/31

RENTERS PLACE OF USE: 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	
06N	40E	32					34												34

Total Acres: 34

RENTAL AGREEMENT CONDITIONS OF ACCEPTANCE

1. The use of water under this agreement shall be subject to the provisions of Idaho Code § 42-1766.
2. Rental of the specified right from the bank does not, in itself, confirm the validity of the right or any elements of the water right, or improve the status of the right including the notion of resumption of use. It does not preclude the opportunity for review of the validity of this water right in any other department application process.
3. Use of water under this agreement does not constitute a dedication of the water to renter's place of use, and upon expiration of this agreement, the points of diversion and place of use of the water shall revert to those authorized under the water right and/or again be available to rent from the bank.
4. Use of water under this agreement shall not prejudice any action of the Department in its consideration of an application for transfer or permit filed by the applicant for this same use.
5. Renter agrees to comply with all applicable state and federal laws while using water under this agreement.
6. Renter agrees to hold the Board, the Director and the state of Idaho harmless from all liability on account of negligent acts of the renter while using water.
7. Renter acknowledges and agrees that the Director may terminate authorization for the use of a water right based on a water right's priority date.
8. Failure of the renter to comply with the conditions of this agreement is cause for the Director to rescind approval of the rental agreement.
9. Use of water under this rental 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. 100.
10. Approval of this rental does not authorize trespass on the land of another party.

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

WATER SUPPLY BANK RENTAL AGREEMENT No. 366






11. The use of water for irrigation under water right 22-7075 may begin as early as April 1 provided other elements of the right are not exceeded. The use of water before May 1 under this remark is subordinate to all water rights having no subordinated early irrigation use and a priority date earlier than 10/27/2009.
12. Rented water rights 22-2184, 22-2230, 22-7075, 22-11147 and 22-11149, when combined for irrigation purposes under rental agreement 366, shall not exceed a total diversion rate of 0.34 cfs, a total annual maximum diversion volume of 119 af at the field headgate, and the irrigation of 34 acres.
13. The water rights rented herein, when combined with all other rights, shall provide no more than 0.02 cfs per acre nor more than 3.5 afa per acre at the field headgate for irrigation of the place of use.
14. Prior to the diversion and use of water under Rental Agreement 366, renter shall install and maintain acceptable measuring device(s) at the authorized point(s) of diversion in accordance with Department specifications, or shall obtain an approved variance from the Department to determine the amount of water diverted from power records or to maintain an existing measuring device.

Idaho Water Resource Board
Attachment to Water Supply Bank Rental Agreement No. 366

Effective until December 31, 2020

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



-  Authorized Rental Point of Diversion
-  Authorized Rental Place of Use
-  Township/Range
-  Sections
-  QQ



0  Feet
2,000

STATE OF IDAHO
WATER RESOURCE BOARDAPPLICATION TO RENT WATER
FROM THE BOARD'S WATER SUPPLY BANK

RECEIVED

JUL 22 2019

DEPARTMENT OF
WATER RESOURCES

Applicant Name: Richard Smith

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

Yes ☒ No ☐

If yes, specify companion water rights in Section 4

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

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

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

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

MINIMUM REQUIREMENT CHECKLIST

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

Yes

- ☒ Completed *Application to Rent Water from the Board's Water Supply Bank*
- ☒ Confirmation that this form has been printed single sided, per requirement of the Water Supply Bank

Attachment N/A Yes

- 2 ☒ A map showing the proposed point(s) of diversion, place(s) of use, and water diversion and distribution systems proposed to be used with your rental request
- 3A ☒ ☐ Detailed information on a proposed use of rental water
- 3F ☒ ☐ Authorization from the owner/operator of the rental point(s) of diversion
- 3H ☐ ☒ Water modeling to account for the impacts of the rental request
- 3J ☒ ☐ Documents justifying a rate of flow greater than 0.02 cfs/acre
- 3K ☒ ☐ Authorization from the owner/operator of the property at the proposed rental place(s) of use
- 4B ☒ ☐ Explanation of how the rental water will sufficiently accomplish your rental purposes
- 4C ☒ ☐ Explanation of consumptive use amounts for water rights experiencing a change in nature of use

Department Use Only – Proposed Water Right(s)

22-2184	22-7075	22-11149
22-2230	22-11147	

1446

STATE OF IDAHO
WATER RESOURCE BOARD

Application to Rent Water (Continued)

1. CONTACT INFORMATION

A. Applicant Richard Smith

Mailing Address	<u>PO Box 8</u>	<u>Rexburg</u>	ID	<u>83440</u>
	Street	City	State	Zip Code
Email Address	<u>rfsmith727@gmail.com</u>		Phone Number	<u>208-390-7000</u>

B. Is this application being completed by an authorized representative on behalf of the applicant? Yes ☒ No ☐

If yes, representatives (includes company employees if the applicant is a corporation, as well as legal counsel or consultants) should provide their information below if they desire to be included on correspondence with the rental applicant.

Representative Kristin Moore Professional Title Sen. Water Rights Analyst

Organization Rocky Mountain Environmental Assoc. Relationship to Applicant consultant

Mailing Address 482 Constitution Way Ste 303, Idaho Falls, ID 83402

Email Address kristin.rmea@gmail.com Phone Number 208-524-2353

2. MAP

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

3. DESCRIPTION OF PROPOSED USE FOR RENTAL WATER

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

Rental water will be used for land that currently has no water right and has been identified by IDWR as an unauthorized use.

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

Desired Rate (Cubic Feet/Second)	Desired Volume (Acre-Foot)	Minimum Rate* (Cubic Feet/Second)	Minimum Volume* (Acre-Foot)	Desired Acres (if applicable)
0.3 CFS	119 AF	0.3 CFS	85 AF	34 AC

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

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

Desired Start Date (month/day/year)	Latest Possible Start Date (month/day/year)	*Mark Desired Rental Duration (Calendar Years)					**Applicant's preference if rental application cannot be processed prior to the latest possible start?	
6/15/2019	7/1/2019	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 2	<input type="checkbox"/> 3	<input type="checkbox"/> 4	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> Process application as soon as possible	<input type="checkbox"/> Return application to applicant

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

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

STATE OF IDAHO
WATER RESOURCE BOARD

Application to Rent Water (Continued)

- D. Describe your water distribution system and how rental water will be delivered from the point(s) of diversion (POD) to the proposed place of use (POU):
Existing well and pump that delivers water to an existing pivot sprinkler system. The lands upon which the rental water will be applied are within the existing system.

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

POD Description	Water Source	Other Water Rights Diverted from this POD
SENWSW S32 T6N R40E	Ground water	22-13797, 22-13958, 22-13746

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

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

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

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

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

- ☒ Irrigation 34 (number of acres) Duration: Subject to IDWR standard seasons of use
☐ Commercial from: _____ (mm/dd) to: _____ (mm/dd)
☐ Stockwater from: _____ (mm/dd) to: _____ (mm/dd)
☐ Industrial from: _____ (mm/dd) to: _____ (mm/dd)
☐ Other: _____ from: _____ (mm/dd) to: _____ (mm/dd)

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

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

Applicant has verbal, annual lease arrangement with property owner, an investment group.

- L. List all other water rights and sources of water at the rental place of use for the same purpose, including privately owned water rights and water received from a municipal supplier, an irrigation district, a canal company or any other water delivery entity. Explain why additional water is required:

No other water rights at the proposed place of use.

STATE OF IDAHO
WATER RESOURCE BOARD

Application to Rent Water (Continued)

4. RENTAL REQUESTS FOR SPECIFIC WATER RIGHTS

A. Are you requesting to rent specific water rights?

Yes ☒ No ☐

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

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

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

Water Right Elements Leased to Water Supply Bank					Leased totals, minus water right elements involved in active rental agreements, equals water right elements available for rent	Water Supply Bank Rental Request		
Water Right Number (leave blank if sub-total of combined limits)	Nature of Use	Diversion Rate (CFS)	Volume (AF)	Acres (AC)		Diversion Rate (CFS)	Volume (AF)	Acres (AC)
22-2184	Irrigation							
22-2230	Irrigation							
22-7075	Irrigation							
22-11147	Irrigation							
22-11149	Irrigation							
		0.72	276.5	79		0.3	119	34
Applicants must ensure the requested rate per acre and volume per acre do not exceed the rate per acre and volume per acre limits of water rights leased to the Water Supply Bank					TOTAL	0.3	119	34
						CFS	AF	AC

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

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

The combined limits restrict the diversion to 0.008 cfs/acre. The system in which these rights will be used already operates under a low rate per acre.

C. Does your rental request propose to change the nature of use for any water right(s) being rented?

Yes ☐ No ☒

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

STATE OF IDAHO
WATER RESOURCE BOARD

Application to Rent Water (Continued)

5. ADDITIONAL INFORMATION

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

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

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

Unauthorized Use letter dated January 31, 2019, Case Number E2019-1364

- D. Additional Information

DECLARATION

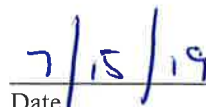
I hereby assert that the information contained in this application is true to the best of my knowledge. I understand that any willful misrepresentations made in this application may result in rejection of the application or cancellation of an approval. I understand that if this rental application is approved, it will be subject to the provisions of Section 42-1766, Idaho Code and all applicable state and federal laws. I understand that the submission of a rental application provides no guarantee for approval of a rental agreement. I also understand that, per Idaho Code 42-201, it is unlawful to divert or use water without a valid water right and that I am not authorized to utilize water as proposed in this application prior to the execution of an approved rental agreement.



Signature of Applicant



Printed Name of Applicant



Date

Signature of Representative

Printed Name of Representative

Date

Mail to:

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



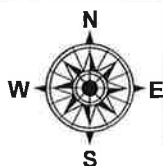
0 500 1,000 2,000 Feet

2017 NAIP

Legend

- WR POD 22-2184 et al
- Proposed Rental POD
- Proposed Rental POU
- WR POU 22-13797, 22-13958

- Twp & Rng
- Section
- QQ



Proposed Rental Location

Richard Smith

RMEA #15-0014

by: KM

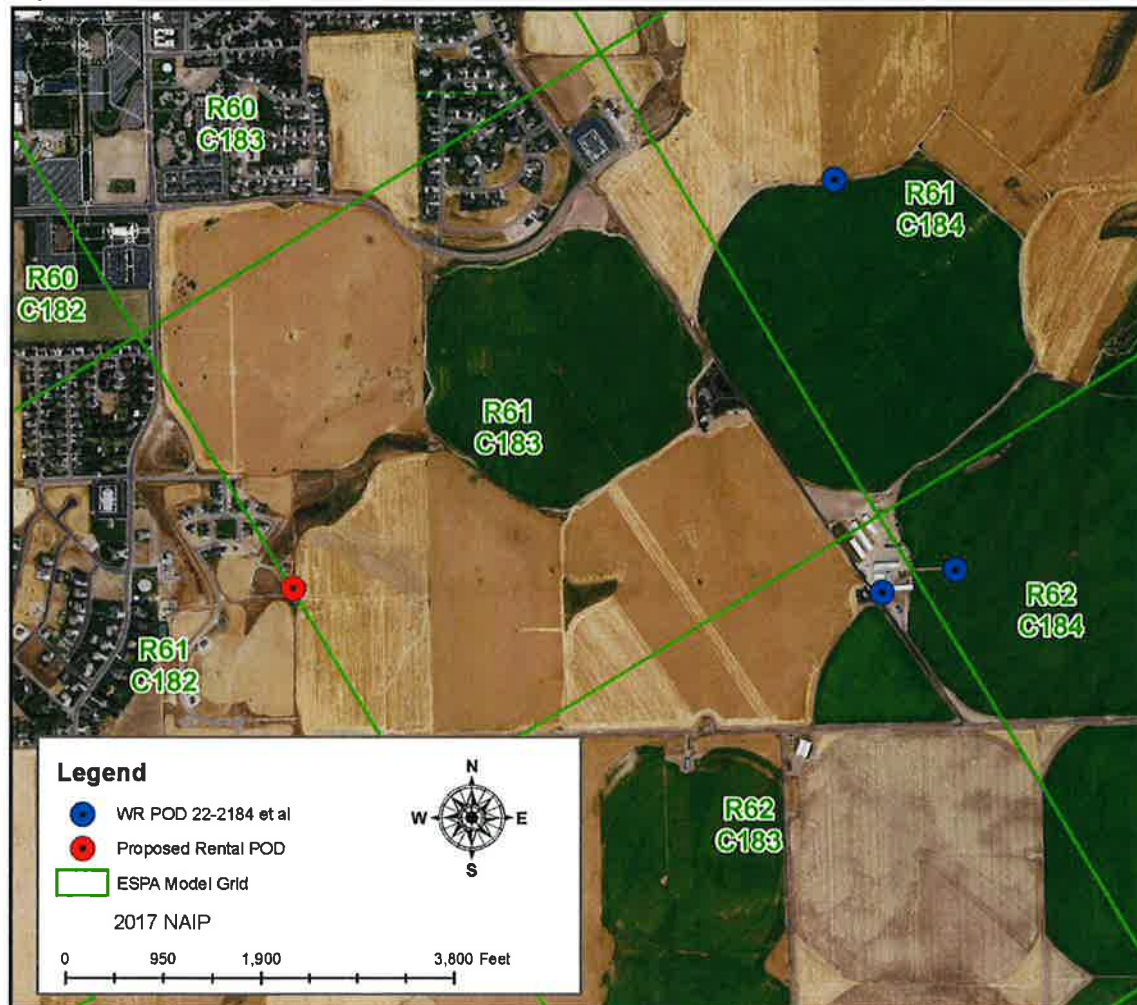
Date: 5/7/2019



Eastern Snake Plain Aquifer Modeling Analysis

The applicant proposes to rent his own water right to be used on a neighboring property. Wells are all within adjacent cells, as shown in Figure 1. No mitigation is required.

Figure 1. ESPA Model Grid





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

April 28, 2020

RICHARD AND JILL SMITH
PO BOX 8
REXBURG, ID 83440

**RE: RENTAL OF WATER FROM THE WATER SUPPLY BANK
WATER RIGHT NOS. 22-2175A, 22-2175B, AGREEMENT 365
22-2184, 22-2230, 22-2075, 22-11147, 22-11149 AGREEMENT 366
22-2184, 22-2230, 22-2075, 22-11147, 22-11149, 22-2175B AGREEMENT 367**

Dear Renter:

Please find enclosed a receipt in the amount of **\$2,303.20** and a copy of a fully executed Water Supply Bank Rental Agreement in connection with the rental of 575.8 acre-feet of water for irrigation. Upon receipt of this fully executed agreement, you are authorized to divert water in compliance with the conditions of water use described in the agreement.

These contracts have been adjusted to correct typographical anomalies

Pursuant to the Water Supply Bank Rules, the rental fee will be retained by the Department to offset administrative costs since you are the owner of the right(s).

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

Sincerely,

for Water Supply Bank

Enclosures: Receipt No. C108315
Rental Agreement (copy)

c: Sascha Marston – Fiscal
James Cefalo – IDWR Eastern Regional Office
Blake Jordan – State Water District No. 100

Buyer, Remington

From: Buyer, Remington
Sent: Tuesday, January 21, 2020 4:27 PM
To: 'Richard Smith'
Subject: RE: Water Supply Bank Leases and Rentals
Attachments: Lease Contracts.pdf; Rental Agreements 365, 366 and 367.pdf

Mr. Smith,

I am pleased to inform you that processing of your Water Supply Bank lease and rental requests has been completed. The lease contracts and rental agreements attached to this email will soon be mailed to you from our Boise office.

Once you receive the documents by mail, please sign them and return to them to our office with the rental payment of \$2,303.20. Once we receive from you the rental payment and the signed documents, we will execute the transactions and your lease contracts and rental agreements will be active through 2020.

Please know there is one final outstanding piece of information that our office is seeking clarification on. Our review indicates that 79.0 acres of land authorized to be irrigated under your water rights 22-2181, 22-2230, 22-7075, 22-7507, 22-11147 and 22-11149 is owned by Kauer Properties LLC. I presume you have an agreement in place with Erma Kauer, by which she authorizes you to irrigate lands owned by her? By way of a reply to this email, or by inclusion with the signed lease contracts and rental agreements that you will soon submit to our office, please provide us with a document to confirm you are authorized to irrigate lands owned by Kauer Properties LLC.

Please feel free to follow up with me if you have any final questions about the above matters. Else, we'll soon look forward to receiving the finalized documents from you.

Regards,

Remington

From: Richard Smith [mailto:rsmith727@gmail.com]
Sent: Friday, December 27, 2019 4:42 PM
To: Buyer, Remington <Remington.Buyer@idwr.idaho.gov>
Subject: Re: Water Supply Bank Leases and Rentals

Hi Remington,

Yes, I would like the lease back to run for 2019 and 2020.

Thanks for your help.

Richard Smith

Sent from my iPhone

On Dec 27, 2019, at 2:06 PM, Buyer, Remington <Remington.Buyer@idwr.idaho.gov> wrote:

Mr. Smith,

Merry Christmas and Happy New Year to you. IDWR has concluded our review of your Water Supply Bank lease and rental proposals, however we have been delayed in finalizing the documents and submitting them to you for your review and signature. I anticipate we can send out the documents for your review and signature by the end of next week.

The proposals to lease portions of your water rights to the Water Supply Bank run for 2019 and 2020, however you've only requested to rent back to yourself portions of these water rights in 2019. Would you like have rental agreements in place for 2020 as well? If so, we will ensure the rental agreements run through the end of 2020.

Regards,

Remington

Buyer, Remington

From: Cefalo, James
Sent: Thursday, October 10, 2019 4:40 PM
To: Buyer, Remington; Jordan, Blake
Subject: RE: Richard Smith Rental Requests

Remington,

I don't have any concerns with the proposed WSB Rentals. I'm glad Mr. Smith has been able to address some of his potential enforcement issues.

James

From: Buyer, Remington
Sent: Thursday, October 10, 2019 4:37 PM
To: Jordan, Blake <Blake.Jordan@idwr.idaho.gov>; Cefalo, James <James.Cefalo@idwr.idaho.gov>
Subject: Richard Smith Rental Requests

Blake, James,

Attached to this email are draft agreements, maps, and review memos for rental requests by Richard Smith, who is proposing to rent his owner water rights to resolve two NOVs, and to allow for faster-than-permissible diversion rates from wells he uses for irrigation purposes.

The places of use for the rights Mr. Smith has requested to rent overlap with City of Rexburg municipal water rights, and it is anticipated that irrigation of the lease place of use will occur simultaneous with irrigation under these rentals. I have tried to articulate the complexity of the situation in my review memos.

Please advise if you have any questions, comments or concerns about these rental requests.

Thank you,

Remington

MEMORANDUM

To: Water Right(s)
From: Justin Ferguson and Remington Buyer
Date: October 10, 2019; January 2, 2020
Re: Review & Analysis of Water Supply Bank Rental Application 1448

Purpose/Narrative: Application to rent water rights from the Water Supply Bank, received July 22, 2019, from Mr. Richard F Smith, through Kristin Moore of Rocky Mountain Environmental Associates. The application seeks a rental authorization to irrigate 34.0 acres that are not presently associated with any irrigation water rights, and which were recently issued a notice of violation (NOV: E2019-1364).

Originally, rental application requested a rental water use approval for 2019 only and Rental Agreement 366 was approved by IDWR in October 2019. However, the rental agreement was not provided to the applicant in time for them to sign and execute it prior to the end of 2019. As such, the Department reached out to the applicant on December 27th, 2019, to determine whether they were interested in having the rental approval continue beyond 2019, into 2020, to which the applicant replied in the affirmative. This memo thus is updated as of January 2, 2020, to reflect the change in rental duration.

Authority to File: The land to which the NOV was issued (and where the rental will occur) is owned by MBP Industries LC Crut Mohler 1973 Trust (MBP), and the well from which water is proposed to be diverted to accomplish the rental is on land owned by Founders Square LLC. Per information provided by Mr. Smith, and by Scott Peterson, who represented himself as the "attorney in fact and manager" of the MBP property, Mr. Smith leases the property from MBP. Thus, there appear to be **no concerns about Mr. Smith's authority to use rental water on this property.**

Mr. Smith has not provided evidence of his authorization to divert water from the well, associated with water rights 22-13746, 13797 and 13958, which are registered in IDWR's records as belonging to B & B Farms, care of Byron Jensen. However, in light of the fact that Mr. Smith may have already been diverting water from the well for the irrigation of the land he is leasing from MBP, it appears he is able to divert the water from the well. A condition will be placed on the rental to acknowledge that the approval of the agreement does not authorize trespass on the land owned by Founders Square.

Water Right Validity: There are no water rights on the lands proposed to be irrigated under the rental. The water rights that will be used for this rental are valid, and owned by the applicant, Mr. Smith.

Injury to Other Water Rights: The Bank is authorized to reject and refuse (or partially and conditionally approve) rentals where a use of water will either: reduce the quantity of water available under other existing water rights; or, where the water supply involved is insufficient for the purposes for which a rental is sought. The nature of the water rights proposed to be rented and the use of rental water call into question whether this rental request should be refused and/or rejected, or conditionally approved, based on possible injury.

The water rights being rented are ESPA ground water rights which overlie residential properties that appear to be served by municipal water from the City of Rexburg. The ESPA is a ground water management area, and it is recognized that new uses of ESPA ground water must be mitigated, to avoid causing injury to prior appropriated water rights that depend on sustainable management of the ground water resource. Through this rental, an overall increased use of ESPA ground water might occur, as municipal water is used to irrigate the residential properties at the lease location of the water rights being rented, while simultaneously, the water rights being rented will authorize a diversion of ESPA ground water for irrigation of lands not presently authorized to be irrigated under any existing ESPA water rights.

However, although an increased use of ESPA ground water might occur through this rental, it is not apparent that the presently available supply of ESPA ground water is insufficient to authorize the irrigation of 34.0 acres, and it is equally not apparent that Mr. Smith's rental use of water will directly reduce the quantity of water available to other, existing water rights. As such, insofar as water is available to irrigate the rental place of use, and Mr. Smith's use of ESPA ground water does not deprive other water rights of the quantity of water to which they are entitled, this rental may be permissible.

Enlargement of Use: Provided that the maximum instantaneous rate, overall and consumptive use of water diverted through this rental is less than the maximum diversion rate, and overall and consumptive use of water associated with the leased extent of the water rights being rented, then no enlargement of the water rights being rented should occur through this rental. Also, provided that the diversion rates and volumes authorized under this rental are proportionate to the diversion rates and volumes of the water rights which are also diverted and used via wells and on lands associated with this rental, then no enlargement of those other water rights should occur.

This rental will authorize irrigation of lands, adjacent to lands irrigated under water rights 22-13797 and 13958, through diversions of water via a well from which water rights 22-13797 and 13958 are diverted. Water rights 22-13797 and 13958 authorize a combined, limited diversion rate and volume of 1.46 cfs and 619.7 af, for the irrigation of 140.3 acres, which equates to a per-acre diversion rate and volume of 0.01 cfs and 4.4 afa, respectively. Provided that the amounts being rented are approximately equivalent to, and no greater than, 0.01 cfs/ac and 3.5 afa/ac, then no enlargement should occur to water rights 13797 and 13958.

To protect against enlargement, a proportionate amount of the leased rights must be rented as follows:

WR #	Diversion Rate (CFS)	Volume (AF)	Acres, Limited	Rate / Acre	Vol / Acre	Diversion Rate (CFS)	Volume (AF)	Acres, Limited	Rate / Acre	Vol / Acre
	Amount Leased					Amount Rented				
22-2184	0.160	67.2	19.2	0.008	3.5	0.091	38.2	10.92	0.008	3.5
22-2230	0.080	32.1	9.2	0.009	3.5	0.045	18.2	5.20	0.009	3.5
22-7075	0.300	121.0	34.6	0.009	3.5	0.170	68.6	19.60	0.009	3.5
22-11147	0.030	10.4	3.0	0.010	3.5	0.017	5.9	1.70	0.010	3.5
22-11149	0.030	10.8	3.1	0.010	3.5	0.017	6.1	1.80	0.009	3.4
Combined	0.600	241.5	69.0	0.009	3.5	0.340	137.1	39.2	0.009	3.5

Amount Authorized: 0.340 119.0 34.0 0.010 3.5

Local Public Interest: Beyond the above-referenced injury and enlargement concerns, staff are not aware of any information to suggest this rental is not in line with local public interests.

Beneficial Use/Conservation of Water Resources: Irrigation is a beneficial use, and the rental appears consistent with the conservation of water resources in Idaho.

Department Staff or Watermaster Comments: Comments will be requested from Water District 100 and IDWR Eastern Region offices.

Buyer, Remington

From: Jordan, Blake
Sent: Friday, October 11, 2019 9:05 AM
To: Buyer, Remington; Cefalo, James
Subject: RE: Richard Smith Rental Requests

No concerns

Thanks,
Blake

From: Buyer, Remington
Sent: Thursday, October 10, 2019 4:37 PM
To: Jordan, Blake <Blake.Jordan@idwr.idaho.gov>; Cefalo, James <James.Cefalo@idwr.idaho.gov>
Subject: Richard Smith Rental Requests

Blake, James,

Attached to this email are draft agreements, maps, and review memos for rental requests by Richard Smith, who is proposing to rent his owner water rights to resolve two NOVs, and to allow for faster-than-permissible diversion rates from wells he uses for irrigation purposes.

The places of use for the rights Mr. Smith has requested to rent overlap with City of Rexburg municipal water rights, and it is anticipated that irrigation of the lease place of use will occur simultaneous with irrigation under these rentals. I have tried to articulate the complexity of the situation in my review memos.

Please advise if you have any questions, comments or concerns about these rental requests.

Thank you,

Remington

From: Scott Peterson [mailto:scottpeterson48@yahoo.com]
Sent: Thursday, October 3, 2019 3:47 PM
To: rfsmith727@gmail.com
Cc: Buyer, Remington <Remington.Buyer@idwr.idaho.gov>
Subject: Lease

To Whom It May Concern:

I am the Attorney in Fact and Manager, for the owners, of the properties outlined in the attached Lease Agreement.

It is understood, between the parties in the Lease Agreement, the lease has continued, and is to continue, on a year to year basis beyond the expiration date.

I confirm the lease is still valid and both parties have agreed to continue the lease on a year to year basis. Mr. Smith is current on his payments and in good standing.

If questions feel free to contact me.

Scott Peterson, Atty in Fact
702-813-6910

LEASE AGREEMENT

This Lease is made and executed on Nov 31, 2008 by and between Scott Peterson, Attorney in Fact for MBP Industries, LC CRUT, et al. of Las Vegas, Nevada hereinafter referred to as Lessor, and Richard Smith Farms, Inc., P O Box 8, Rexburg, Idaho, a corporation duly organized under the laws of the State of Idaho, having its principal office at Rexburg, Idaho, hereinafter referred to as Lessee.

Lessor, for and in consideration of the mutual covenants and agreements made herein, demise and lease to lessee that certain tract of land situated in the County of Madison, State of Idaho, more particularly described as follows:

Approximately 65 acres of farmland located in Section 29 and 32, Township 6 North, Range 40 East Boise Meridian, Madison County, Idaho. Said parcel consists of approximately 30 acres of irrigated farm ground and 35 acres of dry farm ground. Said premises is identified on the map attached hereto.

On the following terms and conditions:

1. **TERM OF LEASE** The initial term of this lease shall be for 5 years commencing on April 1st, 2008 and ending on November 30, 2012. As used herein, the expression "term hereof" refers to such initial term and any renewal thereof as hereinafter provided.

2. **RENT** Lessee shall deliver to Lessor as rent for the above described property Three Thousand Dollars (\$3,000) on the 1st day of May, 2008 and a like amount on the 1st day of May of each year thereafter, up to and including May 1st, 2012.

3. **FARMING PRACTICES - RELEASE OF LIABILITY** Lessee shall actively farm the above described premises at all times during the term of the lease described herein. The type of crops to be grown on the demised premises and the manner of cultivation shall be at the sole discretion of lessee. Lessee shall furnish all farming equipment necessary to properly farm the demised premises. Title to the crops grown on the demised premises shall be vested in the lessee at all times.

Lessor and Lessee acknowledge and understand that the farmland described herein is located near residential property located inside the city limits of Rexburg, Idaho. Lessee agrees that it is fully responsible for any loss, claim or damage arising from farming practices conducted on said demised premises and Lessee further agrees to hold Lessor harmless from any claim or cause of action arising from such farming practices conducted on said premises.

4. **TAXES, ASSESSMENTS AND OTHER CHARGES** Lessor shall pay all taxes, assessment and other charges of any nature or kind that have been or may be assessed or levied upon the demised premises and agrees that so long during the term of this lease as lessee shall continue to faithfully perform hereunder, lessee shall have quiet and peaceful possession of the demised premises.

5. **PRIOR TERMINATION** The parties hereto agree that lessor may sell individual lots or any portion of the above described premises during the term of this lease. Lessor shall give lessee 30 days written notice of the sale of any portion of the demised premises. If said sale of the property occurs during a time when lessee has growing crops on the premises, lessee will be given a reasonable amount of time to harvest crops from any portion of the demised premises that is sold. In the event of such sale, lessee may elect to continue to lease the remaining portion of the demised premises or may terminate this lease. If lessee elects to continue to lease the remaining property, the rental amount described in section 2 hereof shall be reduced by an amount equal to \$100 for each irrigated acre and \$0 dollars for each dry farm acre per year for each acre that is sold and does not continue to be a part of the demised premises during the remaining period of this lease.

7. **DEFAULT AND FORFEITURE** Lessor shall, on default with respect to any of the provisions of this lease by lessee, provide lessee with written notice of any breach of the lease terms or conditions and lessee shall then have 30 days to either correct the condition or commence corrective action if the condition cannot be corrected in 30 days. If the condition cannot be corrected in 30 days, lessee shall have a reasonable time to complete the correction. Lessor may elect to enforce the terms and conditions of the lease by any other method available under the law, or lessor may declare a forfeiture of the lease by providing 60 days notice to lessee of lessor's intent to do so.

8. **BINDING EFFECT** The terms, covenants and conditions of this lease shall be binding on and inure to the benefit of the heirs, personal representatives, administrators, successors, or assigns of the parties hereto.

In witness whereof, the parties have executed this lease the day and year first above written.

Scott Peterson Atty
IN
FACT

By: _____

State of Nevada }
County of }

On this 8 Day of April, 2008, before me a Notary Public in and for said state, personally appeared Scott Peterson, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.



Melanie Jo Lynn

Notary Public for the State of Nevada residing in
LAS VEGAS

My commission expires:

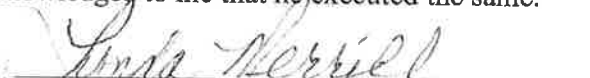
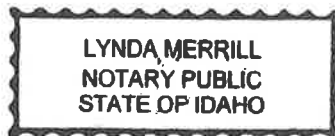
RICHARD SMITH FARMS, INC.



Richard F. Smith, President

State of Idaho }
County of Madison }

On this 2nd Day of April, 2008, before me a Notary Public in and for said state, personally appeared Richard F. Smith, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.


Notary Public for the State of Idaho residing in
Rexburg Parker

My commission expires: 4.4.2018

From: Kristin Moore [mailto:kristin.rmea@gmail.com]
Sent: Thursday, October 3, 2019 10:49 AM
To: Buyer, Remington <Remington.Buyer@idwr.idaho.gov>; 'Richard Smith' <rsmith727@gmail.com>
Subject: RE: Richard Smith Lease Application

Remington,

Richard should be sending you the authorization information from MBP.

I have put together a spreadsheet of leased amounts, taking into consideration combined use limitations, and rental quantities per rental agreement 1447, 1448, and 1449. This assumes that 69 acres of 22-2184 et al will be leased to the Bank. Richard and I discussed his diversion rate demands at all of his wells to make sure that we are accurate in our representation. These values are listed in the spreadsheet as well and used to calculate total rental requirements.

The water tower well, or the well associated with 22-2175A, 2175B and 7502 only diverted at a rate of 700 gpm (or 1.56 cfs) this year, not 1000 gpm as was originally anticipated. Upon approval of the lease applications, only 1.017 cfs remains in the well, as you indicated. An additional 0.54 cfs will be required to meet the demands at this well. The other wells are pumped at a rate of 2300 gpm, 2500 gpm, and around 60 gpm for the small well, totaling 4860 gpm, or 10.83 cfs. There is not sufficient water right remaining at these wells upon approval of the lease applications and an additional 0.57 cfs is also required. For rental 1447, a total rate of 1.11 cfs is needed.

The rental application originally proposed a rental of 22-2184 et al, 22-2175A, and 22-2175B to accomplish the required diversion rate. However, it does not appear as if the entirety of the proposed rental is required for 2019 irrigation. It does not matter which water right is selected to be rented of the proposed rights, but the attached spreadsheet uses both 22-2184 et al and 22-2175A. The spreadsheet assumes that 69 acres of 22-2184 et al will be leased to the Bank. If the final numbers result in less than 69 acres, it is proposed that any additional rate needed for Rental 1447 be taken from 22-2175A.

Please let me know if this satisfies your concern regarding quantities.

Kristin Moore
Senior Water Rights Analyst
482 Constitution Way, Ste 303, Idaho Falls, ID 83402
E-Mail: kristin.rmea@gmail.com
VOICE: 208-524-2353 ||| FAX: 208-524-1795



CONFIDENTIALITY NOTICE: This message is intended only for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination or distribution of this communication to other than the intended recipient is strictly prohibited. If you have received this communication in error, please notify us immediately by reply email to the sender or collect telephone call to (208) 524-2353. *Thank you.*

2019 WSB Review

Lease Quantities

WR #	CFS	GPM	AFA	Acres	CFS/AC	Remaining Ac	Remaining cfs (Remaining Ac x cfs/ac)	WSB Acres	WSB cfs (WSB Acres x cfs/ac)
Water Tower Well									
22-2175A	1.39	624	304.5	87	0.016	0	0	87	1.39
22-2175B	1.25	561	273	78	0.016	39	0.63	39	0.63
22-7502	0.8	359	140	40	0.020	40	0.80	0	0.00
Combined	2.64	1185	577.5	205	0.013	79	1.017	126	1.62
North Well and Both Shop Wells									
22-2184	3.55	1593	1085	310	0.011	1045.0	8.92	69.0	0.59
22-2230	1.68	754	518	148	0.011				
22-7075	4.94	2217	1953	558	0.009				
22-11147	0.54	242	168	48	0.011				
22-11149	0.57	256	175	50	0.011	157.0	3.14	0.0	0.00
22-7507	3.14	1409	549.5	157	0.020				
Combined	10.85	4869	4449	1271	0.009	1202	10.26	69.0	0.59
Total Leased to the Bank								195.0	2.21

These values were adjusted from the original lease applications based upon review of combined use limitations of rights diverted from the same wells.

Rental Quantities

Rental #	Water Tower Well	North Well	Shop Well	Small Shop Well	Total (gpm)	Total (cfs)	Rem. Amounts After Lease (cfs)	Required Rental Rate (cfs)
1447	700	2300	2500	60	5560	12.4	11.28	1.11

These pumping values are based upon diversion rates used in 2019, as provided by Richard Smith.

I Amounts for Rental

	WSB Lease		Rental 1447		Rental 1448		Rental 1449		Total Rented		Total Not Rented	
Water Rights	acres	cfs	acres	cfs	acres	cfs	acres	cfs	ac	cfs	ac	cfs
22-2184 et al	69	0.59	14	0.12	34	0.29	21	0.18	69	0.59	0	0
22-2175A	87	1.39	62	0.99	0	0	0	0	62	0.99	25	0.40
22-2175B	39	0.63	0	0	0	0	0	0	0	0	39	0.63
	195	2.60	76	1.11	34	0.29	21	0.18	131	1.58	64	1.02

From: Buyer, Remington [<mailto:Remington.Buyer@idwr.idaho.gov>]

Sent: Tuesday, October 01, 2019 5:09 PM

To: Kristin Moore <kristin.rmea@gmail.com>; 'Richard Smith' <rfsmith727@gmail.com>

Subject: RE: Richard Smith Lease Application

Kristin,

I reviewed the quitclaim, deeds and maps today and agree all information is in order for the Bank to finalize processing of the lease of portions of water rights overlying the Harvest Heights subdivision (lease application 1387).

The only remaining matters that require clarification are:

- The specific diversion rate required for rental application 1447, and
- Confirmation that a lease agreement, or an alternative approval, exists to enable Mr. Smith to irrigate lands belonging to MBP Industries LC Crut Mohler 1973 Trust (MBP; rental application 1448).

If the maximum diversion rate required for 2019 from the well associated with water rights 22-2175A, 2175B and 7502 is 2.23 cfs, a maximum rental of 1.223 cfs would be required. If a higher diversion rate is required, we can increase the rental diversion rate. The other wells associated with Mr. Smith's property can already authorize a diversion rate of 2.23 cfs with the water rights already associated with the points of diversion, so no rental would be necessary from these PODs. Please confirm the desired diversion rate for rental application 1447.

Please forward to us evidence Mr. Smith is authorized to irrigate lands belonging to MBP.

Regards,

Remington

From: Kristin Moore [mailto:kristin.rmea@gmail.com]
Sent: Monday, September 30, 2019 2:20 PM
To: Buyer, Remington <Remington.Buyer@idwr.idaho.gov>; 'Richard Smith' <rsmith727@gmail.com>
Subject: RE: Richard Smith Lease Application

Remington,

Richard read my last email and I need to clarify that the the well CAN produce 1000 gpm, but he didn't divert that much this summer. He's out of town right now, but you can expect to see the letter in a couple of days.

From: Kristin Moore [mailto:kristin.rmea@gmail.com]
Sent: Monday, September 30, 2019 12:45 PM
To: 'Buyer, Remington' <Remington.Buyer@idwr.idaho.gov>; 'Richard Smith' <rsmith727@gmail.com>
Subject: RE: Richard Smith Lease Application

Remington,

We have been waiting on a few deeds to confirm water right ownership, which has delayed me sending you this information. Attached is a map and a copy of the relevant deeds to show water right ownership by either Harvest Heights LLC or Richard Smith.

A Quitclaim Deed from Harvest Heights LLC to Richard and Jill Smith conveys water right ownership for 21.90 acres in the north half of the subdivision in 2004, prior to any lots being sold. This area is outlined in red on the map.

Of the remaining lots not included in the Quitclaim Deed, there are 14 parcels that the water rights were not reserved on, totaling 10.2 acres. These are shown in black on the map. Everything else remaining, including developed and undeveloped lots and roadways, were reserved or are still owned by Harvest Heights or Richard Smith. Everything in blue was reserved by deed. All orange is still owned by Richard.

Please let me know if this does not satisfy your requirements for ownership.

Regarding the rental 1447, I'm not sure I understand how only 1.017 cfs still applies to the well for 22-2175A, 22-2175B, and 7502. We are renting 2.24 cfs under this rental proposal, which can be applied to that well, or spread out to the other three wells in the proposal. It doesn't appear to me that we are short of water if this is approved. In addition, Mr. Smith indicated this morning that the well was not producing the 1000 gpm that he anticipated. I feel that the rental proposal will provide adequate diversion rate to meet the operation requirements without the additional rental of 22-2175A.

Thank you,

Kristin Moore
Senior Water Rights Analyst
482 Constitution Way, Ste 303, Idaho Falls, ID 83402
E-Mail: kristin.rmea@gmail.com
VOICE: 208-524-2353 ||| FAX: 208-524-1795



From: Buyer, Remington
Sent: Friday, September 27, 2019 1:55 PM
To: 'Richard Smith' <rsmith727@gmail.com>
Cc: Kristin Moore <kristin.rmea@gmail.com>
Subject: RE: Richard Smith Lease Application

Mr. Smith,

Thank you for your email.

Based on the information you have provided, we can move forward with finalizing a lease of water right 22-2175A. We also have the necessary information to move forward with processing a lease of 22-2175B. However, additional information is still required to fully lease into the Bank the 79.0 acres proposed under water rights 22-2184, 2230, 7075, 11147 and 11149 (application 1387).

Per Madison County Assessor Office records, it appears approximately 45.0 of the 79.0 acres in the Harvest Heights subdivision remain owned by you. Your September 18, 2019 correspondence indicated that Kristin Moore of Rocky Mountain Environmental would provide our office with copies of deeds to confirm the location of additional lands where you retained ownership of the appurtenant water rights as title to the underlying lands were transferred to new owners. To date, we have not yet received those records. **Please ensure our office receives the relevant information prior to the deadline, next Friday, October 4, 2019.** If we do not receive information confirming the extent of your ownership of the water rights on lands no longer owned by you, we will proceed in processing a lease of the water rights, proportionate to 45.0 acres.

Per your September 18, 2019 letter, we understand that your desire for rental application 1447 is that each of the four points of diversion associated with your irrigation of lands in sections 28, 32, 33 should be covered with water rights sufficient to authorize an instantaneous diversion rate of 1,000 gallons per minute, or 2.23 cubic feet per second. Even if 79.0 acres of water rights unleased extent of water rights 22-2184, 2230, 7075, 11147 and 11149 are leased into the Bank, the remaining, unleased balance of these water rights (9.45 cfs) would be sufficient to cover your diversion rate needs. However, only 1.017 cfs will remain authorized to be diverted from the well associated with water rights 22-2175A, 2175B and 7502, which would necessitate a rental of an additional 1.223 cfs at this well. This can be accomplished via a rental of 1.223 cfs from the 1.390 cfs that is being leased into the Bank under 22-2175A. **Please confirm by way of a response to this email that the rental of 1.223 cfs from the leased extent of 22-2175A will be sufficient to satisfy your diversion rate needs under rental application 1447?** If that is sufficient, we will proceed in finalizing our review of rental application 1447, and we will only rent to you the required portion of 22-2175A (and not additional leased portions from your other water rights).

In your September 18, 2019 email correspondence, you indicated that you were attaching copies of a letter from the owner of the lands that you lease from MBP Industries LC Crut Mohler 1973 Trust (MBP). However, no attachments were received with your email. **Please resend the attachments.** We cannot proceed in finalizing rental application 1448 without confirmation that you are authorized to irrigate the lands owned by MBP.

By way of your September 18, 2019 email, it is acknowledged that DS & S leases your land in the NENE quarter-quarter of Section 29, Township 06N, Range 40E, and that they divert water from a well located on their own property to accomplish irrigation of your land. We can thus move forward with rental application 1449, once we finalize processing of lease application 1447. **Please ensure we timely receive the necessary information required for lease application 1447, so that we can finalize rental application 1449.**

Regards,

Remington

RICHARD SMITH FARMS

950 S. Millhollow Rd
PO Box 8
Rexburg Idaho 83440
Telephone (208) 356-4912
Email – rfsmith727@gmail.com

September 18, 2019

Dear Remington,

This letter is in response to your request for additional information for Water Supply Bank Lease Applications 1385 and 1387 and Rental Applications 1447, 1448, and 1449 dated September 5, 2019.

During the Snake River Basin Adjudication, I filed a claim for water right 22-2175A. I was beneficially using this water right and accompanied the examiner during the adjudication field examination. The SRBA Court decreed the water right to me, confirming ownership of the water right.

Ownership of the water rights 22-2184, 2230, 7075, 11147, and 11149 was retained by me or Harvest Heights LLC (of which I am the owner) when selling the lots in the Harvest Heights subdivision, with the exception of a few lots. Kristin Moore at Rocky Mountain Environmental Associates, Inc has a copy of the deeds and will send those to you.

Regarding the Rental Application 1447, it is my intention to keep all of the proposed PODs and the described POU as the rental locations. All of my wells at this farm are connected into a common system. While it is likely that the majority of the rented water will be diverted from the westernmost well, some may be diverted from the other wells also. All water rented will be applied to the system to increase the diversion rate. No additional acres will be irrigated that are not already covered under the existing water rights at the POU.

Application 1448 proposes to rent water for $\frac{1}{4}$ of a pivot. The pivot already receives water from an existing point of diversion, which also serves the $\frac{1}{4}$ pivot that is proposed to receive water through the rental application. I lease the $\frac{1}{4}$ pivot from the property owner and have finally located them to obtain an authorization letter just last week. Please see the attached letter from the owners.

Application 1449 pertains to property owned by me but leased by DS & S. The lessee diverts water from his own well, which is identified in the rental application, to irrigate the half pivot on my property.

Thank You.

Richard Smith



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 5, 2019

Richard F Smith
PO BOX 8
REXBURG ID 83440

RESPONSE DEADLINE:
October 4, 2019

RE: Action Required on Water Supply Bank Lease Applications 1385 and 1387, as well as Rental Applications 1447, 1448 and 1449

Dear Applicant,

The Department of Water Resources (Department) has reviewed the above listed Water Supply Bank applications and review of the following information is required to continue application processing:

1. Confirmation as to how you have maintained ownership of water right 22-2175A;
2. Confirmation that you remain the owner of the portions of water rights 22-2184, 2230, 7075, 11147 and 11149, which are proposed for lease through application 1387;
3. Confirmation of the specific diversion rate, volume and location of the point of diversions (PODs) and places of use (POUs) attributable to irrigation through rental application 1447;
4. Confirmation that you are authorized to access the point of diversion (POD) associated with water rights 22-13746, 13797 and 13958, which is situated on land that appears to be owned by Founders Square LLC, associated with rental application 1448;
5. Confirmation that you are authorized to irrigate lands that appear to be owned by MBP Industries LC Crut Mohler 1973 Trust, associated with rental application 1448; and
6. Confirmation that you are authorized to access the point of diversion (POD) associated with water rights 22-7509, 7510, 7538, 7054A and 7054B, which is situated on land that appears to be owned by John H Smith and Sons Inc, associated with rental application 1449.

The following summarizes why our review of the above information is being requested.

IDWR records indicate you acquired an interest in water right 22-2175A through receipt of a warranty deed from Grant and Camille Ricks in 1994. In 1995, water right 22-2175A was claimed by Gordon and Claudia Crofts in the Snake River Basin Adjudication (SRBA), following which an amended claim was filed by you, in 2005. Water right 22-2175A was eventually decreed to you in 2008. A review of water right 22-2175A records suggests the basis for your ownership of this right emanates from the court decree, not through acquisition of the land to which water right 22-2175A is appurtenant. It thus appears you might be the owner of water right 22-2175A, irrespective of the current ownership of the lands underlying water right 22-2175A. **Please confirm whether the above is correct or incorrect and provide information to clarify the current basis for your ownership of water right 22-2175A.**

Water rights 22-2184, 2230, 7075, 11147 and 11149 authorize irrigation of 1,114.0 acres, of which 79.0 acres are proposed for lease through application 1387. The lease acres are appurtenant to 87 parcels within the Harvest Heights subdivision, 28 of which appear to be owned either by you, or by you through Harvest Heights LLC. However, it is unclear whether you retained ownership of portions of the five water rights appurtenant to the other 59 parcels no longer owned by you in the subdivision. **Please provide us with documentary evidence to affirm that you still maintain ownership of the portions of water rights 22-2184, 2230, 7075, 11147 and 11149 appurtenant to the 59 parcels that are no longer owned by you.**

In conversations earlier this year, you informed our office that you would be submitting a rental for 2019 to enable faster-than-authorized instantaneous diversions of ground water from the well associated with water rights 22-2175A, 2175B and 7502, to access the unencumbered (unleased) extent of water rights 22-2175B and 7502. Specifically, you indicated that you might require an instantaneous diversion rate of up to 1,000 gallons per minute, equivalent to 2.23 cubic feet per second (cfs). We received from you rental application 1447, which requested a diversion rate of 2.24 cfs. However, in addition to the singular well associated with water rights 22-2175A, 2175B and 7502, rental application 1447 also requested an authorization to divert water from all wells associated with water rights 22-2184, 2230, 7075, 11147 and 11149, for the irrigation of 1,110 acres, associated with the places of use for all of the above water rights. Rental application 1447 thus appears to request the creation of a permissible place of use, to combine the PODs and POUs for water rights 22-2175A, 2175B, 2184, 2230, 7075, 11147 and 11149. **Please confirm the specific diversion rates and diversion volume required for rental application 1447, along with the location of the specific PODs and POU acres that will be accessed for any irrigation contemplated under rental application 11147 during 2019.**

Applications 1448 and 1449 propose a rental of portions of water rights 22-2184, 2230, 7075, 11147 and 11149, to authorize the irrigation of lands that were recently served by IDWR with a Notices of Violation (NOVs; E 2019-1364 and E2019-1364).

Application 1448 proposes a rental and diversion of the above five water rights, via PODs associated with water rights 22-13746, 13797 and 13958 (located on lands that appear to be owned by Founders Square LLC), for the irrigation of lands that appear to be owned by MBP Industries LC Crut Mohler 1973 Trust (MBP). The nature of your relationship with Founders Square LLC and MBP is unclear. **Please provide us with evidence that you are authorized to access the wells on lands owned by Founders Square, for the irrigation of lands owned by MBP.**

Application 1449 proposes a rental and diversion of portions of the above five water rights, via the POD associated with water rights 22-7509, 7510, 7538, 7054A and 7054B, which is located on land that appears to be owned by John H Smith and Sons Inc. The nature of your relationship with the land owner is unclear. **Please provide us with evidence that you are authorized to access the well on lands owned by John H Smith and Sons Inc.**

The information requested in this letter must be reviewed by our office to continue processing of your lease and rental applications. Please provide us with answers to the above questions within 30 days (deadline of October 4, 2019), so that we may finalize processing of your applications. If we do not receive from you the requested information following the established deadline, your applications may be returned to you.

If you have any questions, please contact me at (208) 287-4918.

Regards,



Remington Buyer
Water Supply Bank Coordinator

CC: Kristin Moore, Rocky Mountain Environmental Associates