

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

WATER SUPPLY BANK LEASE CONTRACT No. 1017

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

LESSOR: RICHARD F SMITH
PO BOX 8
REXBURG, ID 83440

RECEIVED
FEB 13 2020
DEPARTMENT OF
WATER RESOURCES

RECITALS

1. The Board is authorized under chapter 17, title 42, Idaho Code to operate a water supply bank and to contract with lessors to act as an intermediary in facilitating the rental of water.
2. The Lessor has filed a completed application to lease water rights described below into the Water Supply Bank on forms supplied by the Idaho Department of Water Resources and received by the Department on March 29, 2019.
3. The Director of the Idaho Department of Water Resources has reviewed the application for compliance with the Water Supply Bank rules and has approved the Lease subject to conditions listed below.

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

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

Summary of Water Rights or Portions Leased to the Bank

Water Right No.	Priority Date	Source	Diversion Rate (CFS)	Diversion Volume (AF)	Acres (AC)
22-2175B	2/23/1960	GROUND WATER	0.63	137	39
Lease Totals			0.63	137	39

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)
22-2175B	0.50	137	39	0.013	3.5
Combined Limit Totals	0.50	137	39	0.013	3.5

** The water right elements rentable have been reduced from the water right elements leased to account for a proportionate, combined limit diversion rate of 0.50 cfs authorized under the lease extent of 22-2175B, based on the combined limits of this water right with 22-2175A and 22-7502.*

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

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

WATER SUPPLY BANK LEASE CONTRACT No. 1017

3. **TERM OF LEASE:** The term of this lease shall be January 1, 2019 to December 31, 2020. 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. 1017

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

LESSOR: RICHARD F SMITH

PO BOX 8

REXBURG, ID 83440

By 

Title _____

Date 2/9/20

IDAHO WATER RESOURCE BOARD

322 East Front Street

P.O. Box 83720

Boise, ID 83720-0098

By 

Brian Patton, Acting Administrator
Idaho Water Resource Board

Date 02/21/20

Lease approved by IDWR 

Date 02/21/20

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

WATER SUPPLY BANK LEASE CONTRACT No. 1017

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): 22-2175B

GROUND WATER NESE Sec. 31 Twp 06N Rge 40E MADISON County

Water Right	Beneficial Use	Season of Use			Diversion Rate (CFS)	Volume (AF)
		From		To		
22-2175B	IRRIGATION	04/01	to	10/31	0.50 cfs	137 AF
Totals:					0.50 cfs	137 AF

PLACES OF USE TO BE IDLED UNDER THIS LEASE: IRRIGATION

Twp	Rng	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
06N	40E	32											39						39

Total Acres: 39

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.
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.

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

WATER SUPPLY BANK LEASE CONTRACT No. 1017

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. Right Nos. 22-2175A and 22-7502 are also diverted through point of diversion described above.
13. The portion of water right 22-2175B not leased to the water supply bank shall not exceed a total diversion rate of 0.62 cfs, a total annual maximum diversion volume of 137 af at the field headgate, and the irrigation of 39 acres.
14. The portions of water rights 22-2175A, 22-2775B, and 22-7502 not leased to the water supply bank when combined shall not exceed a total diversion rate of 1.02 cfs.
15. 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. 100.
16. This right 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.

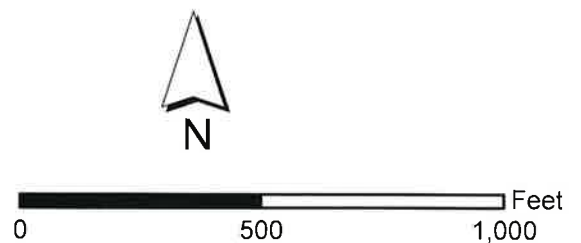
Idaho Water Resource Board
Water Supply Bank Lease Contract No. 1017

22-2175B
Effective until December 31, 2020

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



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



STATE OF IDAHO
WATER RESOURCE BOARD

RECEIVED
MAR 29 2019
DEPARTMENT OF
WATER RESOURCES

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

Designated Applicant Richard Smith
(Select one owner – see item 1A on the application)

Water Right No. 22-2175A, 22-2175B
(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 <u>Internal Revenue Service (IRS) Form W-9</u> for the Designated Applicant. |
| 1C | ☒ | ☐ | <i>Notice of Change in Water Right Ownership</i> 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 <u>Section 42-222(2), Idaho Code</u> . |

Department Use Only

Fee Amount \$ <u>250</u>	Received By: <u>AS</u>	Date Received: <u>3/29/19</u>	Receipt # <u>C106486</u>
W-9 received? Yes ☒ No ☐	(Route W-9 to Fiscal)	Name on W-9: <u>Richard F Smith</u>	

1386

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 Richard Smith

Mailing Address P O Box 8 Rexburg Idaho 83440
Street City State Zip Code

Email Address rsmith727@gmail.com Phone Number 208-390-7000

☒ 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 N/A 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.
Deep well pump
- C. Describe any other water rights used for the same purpose at the same place of use as the water right being offered to the Bank. None
- D. Are any of the water rights identified in Section 4C stacked with the water right proposed for lease? Yes ☐ No ☒
Stacked water rights are used together to achieve a common beneficial use, such as irrigation of the same lands. Stacked water rights cannot be separated and must be jointly leased to the Water Supply Bank. Stacked water rights qualify for the multiple fee payment of \$500.
- E. Will the present place of use continue to receive water from any other source? Yes ☐ No ☒
If yes, explain the relationship between the different water sources and how enlargement of the authorized use will not occur if this water right is leased.
- F. Identify annual volumes and/or rates of water diverted in the last 5 years to accomplish the beneficial use authorized by this water right. Land has been in Water Bank previously. Prior to that time land was watered in accordance with water right. No water measurements conducted
- G. Has any portion of this water right undergone a period of five or more consecutive years of non-use? Yes ☐ No ☒
If yes, describe the circumstances and attach evidence to demonstrate how the water right has not been lost through forfeiture (Attachment 4G). See Section 42-223, Idaho Code for exceptions to forfeiture. Your application may be denied if forfeiture concerns are not addressed.
- H. Is this water right involved in any other IDWR process, such as an application for transfer or a mitigation plan?
If yes, describe.

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: 2019 to 2020 (maximum lease period 5 calendar years).
(Year) (Year)

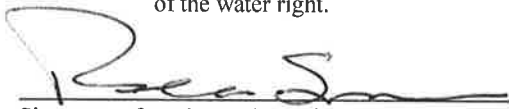
- B. Show the minimum payment acceptable to the seller/lessor. The minimum payment may be shown as the "current rental rate" as established by the IWRB. Include the method of determining the minimum payment if other than the current rental rate.

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

Richard Smith
Printed Name

3/22/2019
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). _____

	Designated Applicant	Applicant #2	Applicant #3
Name		N/A	
Mailing Address			
Phone Number			
Email Address			
Applicant Declaration	As Designated Applicant, I submit this lease application on behalf of all other water right holders.	I authorize the Designated Applicant to submit this application on my behalf.	I authorize the Designated Applicant to submit this application on my behalf.
Signature			

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

STATE OF IDAHO
WATER RESOURCE BOARD

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

ATTACHMENT 2

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

- | <u>Water Right Number</u> | <u>Nature of Use</u> | <u>Leased Rate</u>
(cfs) | <u>Leased Volume</u>
(af) | <u>Leased Acres</u>
(ac) |
|---------------------------|----------------------|-----------------------------|------------------------------|-----------------------------|
| 22-2175A, 222175E | Irrigation | | | APP 78 |
| | | | | |
| | | | | |
| | | | | |
| Total Amounts: | | | | |

2. Source of water Ground water irrigation well tributary to _____

3. Point(s) of diversion:

[illegible]

Water Right 22-2175B



Legend

- Water Right POD
- Water Right POU
- Township/Range
- Sections
- QQ





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 F SMITH
PO BOX 8
REXBURG, ID 83440

**RE: APPLICATION TO LEASE WATER RIGHTS TO THE WATER SUPPLY BANK
22-2184, 22-11147, 22-2230, 22-7075, 22-11149 CONTRACT 987
22-2175A CONTRACT 1016
22-2175B CONTRACT 1017**

Dear Lessor:

Water rights **22-2184, 22-11147, 22-2230, 22-7075, 22-11149, 22-2175A, 22-2175B** was leased into the Water Supply Bank (Bank) as of January 1, 2019, in accordance with the enclosed executed lease contract. **Your water rights, as described on the lease contract, are considered leased into the Bank and should remain unused until they are formally released from the Bank.** More information and further restrictions placed on your water rights while leased can be found in conditions of acceptance of the lease contract. Read the conditions of acceptance carefully.

These contracts have been adjusted to correct typographical anomalies.

The rights will automatically be released from the Bank on **December 31, 2020**, 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.**

Lastly, our review of your water right file for 22-7075 revealed that you were supposed to resume use of your water right by July 1, 2020, in connection with an approved *Extension of Time to Avoid Forfeiture* (extension) application. Leasing your water right, in lieu of resuming use of your water right, extends the protection from forfeiture. However, this approach has not been challenged in court as of the date of this letter and the validity of your water right could come into question since according to Idaho Code §42-222 a resumption appears to be a requirement in the process of filing an extension to avoid forfeiture.

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

Sincerely,



for Water Supply Bank

Enclosure: Executed Lease Contract

c: IDWR- EASTERN REGION
WATER DISTRICT NO. 100



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

January 23, 2020

RICHARD F SMITH
PO BOX 8
REXBURG, ID 83440

**RE: APPLICATION TO LEASE WATER RIGHTS TO THE WATER SUPPLY BANK
22-2184, 22-11147, 22-2230, 22-7075, 22-11149 CONTRACT 987
22-2175A CONTRACT 1016
22-2175B CONTRACT 1017**

******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, 2020**, 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,


for Water Supply Bank

Enclosures: Proposed Lease Contracts



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

January 23, 2020

RICHARD AND JILL SMITH
PO BOX 8
REXBURG, ID 83440

RE: **APPLICATION TO RENT 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

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

Dear Applicant:

The Department of Water Resources acknowledges receipt of your application to rent water from the Water Supply Bank. **I have enclosed a Water Supply Bank Rental Agreement for your review and signature.** Please also include with your signed Rental Agreement documentation to confirm you are **authorized to irrigate lands** owned by Kauer Properties LLC. Upon signature and return of the original agreement, together with the rental fee described below and requested documentation, the Department will also sign the original agreement and return an executed copy to you. Execution of the agreement and compliance with the conditions of approval authorize diversion and use of water as provided in the agreement.

A rental fee of \$2303.20 was calculated based on the current rental rate of \$20.00 per acre-foot times a diversion volume of 575.8 acre-feet for 2019 and 2020.

Please send a check for \$2303.20 made payable to the Idaho Department of Water Resources, **together with the signed rental agreement, within 14 days** so I can complete processing.

The rental fee includes an administrative fee of \$2303.20 for 2019 and 2020.

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

Sincerely,


Water Supply Bank

Enclosure

c: IDWR Front Desk
Kristin Moore – Rocky Mountain Environmental Association

Buyer, Remington

From: Cefalo, James
Sent: Thursday, October 10, 2019 8:47 AM
To: Buyer, Remington; Jordan, Blake
Cc: Hummer, Phill
Subject: RE: Water Supply Bank Lease Applications 1385, 1386 and 1387

Remington,

I don't have any concerns with the proposed WSB leases.

James

From: Buyer, Remington
Sent: Wednesday, October 09, 2019 4:36 PM
To: Jordan, Blake <Blake.Jordan@idwr.idaho.gov>; Cefalo, James <James.Cefalo@idwr.idaho.gov>
Cc: Hummer, Phill <Phill.Hummer@idwr.idaho.gov>
Subject: Water Supply Bank Lease Applications 1385, 1386 and 1387

Blake, James,

Earlier this year, the Bank received applications to lease into the Bank water rights belonging to Mr. Richard Smith of Rexburg, Idaho. After much back and forth, we were able to identify the extent of the portions of Mr. Smith's water rights that he desired to lease. Effectively, the acres being proposed for lease are on the periphery of Rexburg, on what were formerly agricultural fields, and which are now platted to be developed as residential subdivisions.

As we began working through the leases, it came to light that Mr. Smith wanted to rent back portions of the water rights he was leasing, to address two NOV's (E2019-1364 and E2019-1374), as well as to authorize faster-than-permissible diversion rates at his wells, associated with the water rights being leased. I'm working on finalizing the rental review memos for his three rental applications, however, attached to this email are my review memo, and draft lease contracts and maps for the portions of Mr. Smith's water rights proposed for lease.

On behalf of Water District 100 and Eastern Region, please advise if you have any questions, comments or concerns about the lease proposals.

Thanks,

Remington

Buyer, Remington

From: Jordan, Blake
Sent: Thursday, October 10, 2019 12:06 PM
To: Buyer, Remington
Subject: RE: Water Supply Bank Lease Applications 1385, 1386 and 1387

Hi Remington,
I have no concerns.

From: Buyer, Remington
Sent: Wednesday, October 9, 2019 4:36 PM
To: Jordan, Blake <Blake.Jordan@idwr.idaho.gov>; Cefalo, James <James.Cefalo@idwr.idaho.gov>
Cc: Hummer, Phill <Phill.Hummer@idwr.idaho.gov>
Subject: Water Supply Bank Lease Applications 1385, 1386 and 1387

Blake, James,

Earlier this year, the Bank received applications to lease into the Bank water rights belonging to Mr. Richard Smith of Rexburg, Idaho. After much back and forth, we were able to identify the extent of the portions of Mr. Smith's water rights that he desired to lease. Effectively, the acres being proposed for lease are on the periphery of Rexburg, on what were formerly agricultural fields, and which are now platted to be developed as residential subdivisions.

As we began working through the leases, it came to light that Mr. Smith wanted to rent back portions of the water rights he was leasing, to address two NOV's (E2019-1364 and E2019-1374), as well as to authorize faster-than-permissible diversion rates at his wells, associated with the water rights being leased. I'm working on finalizing the rental review memos for his three rental applications, however, attached to this email are my review memo, and draft lease contracts and maps for the portions of Mr. Smith's water rights proposed for lease.

On behalf of Water District 100 and Eastern Region, please advise if you have any questions, comments or concerns about the lease proposals.

Thanks,

Remington

Memorandum

To: Lease Applications 1385, 1386 and 1387
From: Remington Buyer
Date: October 9, 2019
Re: Water Supply Bank Lease Proposal

Purpose/Narrative: Applications received March 29, 2019, from Richard Smith, proposing to lease into the Bank portions of Eastern Snake River Plain Aquifer (ESPA) irrigation ground water rights 22-2175A (WSB App N°. 1385) and 22-2175B (WSB App N°. 1386), along with portions of 22-2184, 22-2230, "*et al*", by which *et al* is interpreted as pertaining to water rights 22-7075, 22-11147 and 22-11149 (WSB App N°. 1387). Mr. Smith is the currently registered right holder for all the above water rights. The irrigation places of use for all three lease applications are lands that were previously agricultural fields, but which are now being developed as residential subdivisions on the southern edge of the City of Rexburg.

Water rights 22-2175A and 22-2175B are children of what was formerly water right 22-2175, which was split into parts A and B. Hence, 2175A and B share a priority date (of 2/23/1960), as well as a single point of diversion (POD), but they authorize irrigation of different, non-overlapping places of use (POUs). The POD for 2175A and B also authorizes diversions of water under water right 22-7502, which was decreed as an enlargement of water rights 22-2175A and B. Water right 22-7502 authorizes irrigation of 40 acres that do not overlap with the POUs for 2175A and B. Through water right 22-7502, 22-2175A and B share a combined limit. However, because 2175 A & B were decreed as separate, and because water right 22-7502 has not been proposed for lease, two separate lease applications and contracts are being considered.

Water rights 22-2184, 2230, 7075, 11147 and 11149 are all ground water irrigation rights, combined limited to a diversion rate of 10.17 cfs, for the irrigation of a common 1,114.0 acre permissible place of use (PPU). Water right 22-11149 is an enlargement of water right 22-2184. Water can be diverted under each of the five rights from any one of three different PODs. Two of the three PODs also allow for diversion of water under irrigation water right 22-7507 (also held by Mr. Smith), for irrigation of 157 acres of land adjacent to, but not overlapping with the 1,114.0 acre PPU. Water right 22-7507 has not been proposed for lease.

Full payment was not originally received for these leases and a request for additional payment was emailed to Mr. Smith on March 29th. The email also requested that Mr. Smith clarify how much of each water right was proposed to be leased to the Bank. Per a phone conversation with Mr. Smith on April 11th, 2019, it was communicated by the applicant that he would like to rent back to himself during 2019 portions of the above water rights being leased to the Bank, in order to offset notice of violations (NOVs) for unauthorized irrigation of lands owned by him (E2019-1364 and E2019-1374). Mr. Smith also affirmed that he wanted to maintain a high instantaneous diversion rate at the wells shared by 22-2175A/B and 22-7502 during the term of the lease, and that he might rent back to himself portions of the above water rights for that purpose during 2019. Rental application 1447 (to allow for high diversion rates) and applications 1448 and 1449 (to address the two NOVs) were received by IDWR on July 22, 2019.

This lease review memo pertains to the review of lease applications 1385, 1386 and 1387.

Authority to File: Mr. Smith is the owner of record for the above listed water rights, and he owns much of the land to which the water rights are appurtenant. The land under water right 22-2175A has been sold and redeveloped as the Valley View Estates residential subdivision, while the land associated with the part of 22-2175B proposed for lease has been subdivided and redeveloped as the Sky Meadows residential subdivision, and land under the water rights proposed for lease through application 1387 has been partially redeveloped as the Harvest Heights residential subdivision.

Water rights 22-2175A and B appear to originate from 22-2175 as follows: water right 22-2175 (Permit N°: G-28497) was developed by and licensed to Grant Bowen and Levi Thomason, for the irrigation of 195 acres. At some point, the water right (and the land to which it was appurtenant) was acquired by A.M.R. Corporation (AMR), who then agreed to provide "one-half interest in irrigation well and water rights...under water license G28497" to Douglas and Melissa Ricks.

AMR eventually quitclaimed the land along with an *"undivided ½ interest in irrigation well"* to Western States Investment Company (WSIC), who then warranty deeded the land and the half-interest in 22-2175 to Gordon and Claudia Crofts. The Crofts in 1995 claimed water right 22-2175A in the SRBA. The other "half-interest" in water right 22-2175 was eventually conveyed by Douglas and Melissa Ricks to Grant and Camille Ricks. Grant Ricks claimed 22-10021 in the SRBA, after which it was renumbered as 22-2175B.

Following the claim submitted in 1995, there appears to be no further engagement with the Crofts. In 2005, Mr. Smith also submitted an SRBA claim for water right 22-2175A and Mr. Smith was eventually decreed water right 22-2175A in 2008. It appears that Mr. Smith thus acquired water right 22-2175A through his successful SRBA claim, and not through an acquisition of land (and the accompanying half-interest in 22-2175) from the Crofts. Because Mr. Smith did not own the land upon which the water right was decreed, the current ownership of the land does not call into question Mr. Smith's decreed ownership of 22-2175A. As such, there are **no concerns about Mr. Smith's authority to file a lease for water right 22-2175A.**

Grant Ricks eventually warranty deeded his half-interest in claimed water right 22-2175B to Richard and Jill Smith. Water right 22-2175B was then decreed to Mr. Smith in 2008. As part of a 2015 lease application for water right 22-2175B, Mr. Smith presented IDWR with a warranty deed showing he conveyed the lands associated with the Sky Meadows subdivision while excluding the water rights from the conveyance. Thus, there are **no concerns about Mr. Smith's authority to file a lease for water right 22-2175B.**

Mr. Smith is the registered agent of Harvest Heights LLC, which appears to be the registered business that developed the subdivision under the portion of the water rights proposed for lease through application 1387. Through correspondence during September and October 2019, Mr. Smith affirmed that, with the exception of 14.0 properties (which sum to approximately 10.3 acres), all lands within the Harvest Heights subdivision have been conveyed to the new owners without water rights. As such, **with the exception of approximately 10.3 acres, there appear to be no concerns with the applicant's authority to lease portions of water rights 22-2184, 2230, 7075, 11147 and 11149 within the Harvest Heights subdivision.**

Water Right Validity/Forfeiture Evaluation: Water right 22-2175A and B were decreed in 2008, while 22-2184 et al were decreed in 2009. A review of satellite imagery from 2014 through 2018 indicates the acres proposed for lease have been vegetated, likely subject to active irrigation (see Appendix A of this memo for a selection of satellite images showing vegetation). It is unclear whether the source of water for irrigation of the residential properties was ground water diverted from wells associated with the applicant's water rights, or, through a diversion and use of water from the City of Rexburg's municipal water rights portfolio.

Per Idaho Code 42-222(2), a right to the use of water shall not be forfeited if water is applied to a place of use for the purposes authorized under a water right (even if the water used is from a separate source or right). Thus, even if the POUs proposed to be leased that overlap the residential subdivisions were irrigated with Rexburg municipal water (and not with ground water from the applicant's wells and water rights) the fact that irrigation of the overlapping places of use occurred is sufficient to maintain the validity of the applicant's water. **No concerns about water right validity.**

Additionally, within the three residential subdivisions, residential structures and roadway hardscapes are visible, and partial diminishment in the full extent of irrigation authorized within the places of use for the applicant's water rights may have occurred. However, at this time, the resolution of near-infrared imagery and accuracy of Madison County parcel spatial data is not definitive enough to conclusively establish the exact extent of partial diminishment that may have occurred. In light of the information available, all portions of the water rights specific to the places of use proposed for lease are being considered for lease.

Injury Evaluation: No injury is evident through this lease proposal alone. However, it is possible the lease might cause injury to already existing water rights that depend upon sustainable management of the ESPA ground water resource. The lands overlying the ESPA have been designated as a ground water management area (GWMA) and new consumptive uses of ESPA ground water must be fully mitigated to avoid injury to the water source, which could injure existing water rights that divert from the source.

If the lease of these water rights enables an increase in the overall consumptive use of ESPA ground water, through continued irrigation under the City of Rexburg's municipal ESPA ground water rights portfolio, and through simultaneous irrigation via a rental of the leased water rights, then overall depletions of ESPA ground water might increase, which could constitute injury to existing water rights that benefit from (and which require) sustainable management of the ESPA resource.

The applicant has stated that portions of the water rights being leased to the Bank are intended to be rented during 2019, to address NOV's E2019-1364 and E2019-1374. Proper rental review should ensure that the proposed rental of the water rights being leased do not cause injury to existing water rights.

Enlargement of Use: Through water right 22-7502, water rights 22-2175A and B are combined limited to a maximum diversion rate equivalent to the additive diversion rates of 2175A and B (7502 provides volume and acres, but no rate). The applicant has requested to lease 87.0 acres of 2175A, and 39.0 acres of 2175B, while he continues diverting water from the common well, for the irrigation of up to 79.0 (unleased) acres. In recognition of the combined limit diversion rate for the three water rights, a partial lease and continued partial use of water under the unleased extent of the water rights, can be accommodated, as follows:

WR #	Diversion Rate (CFS)	Volume (AF)	Acres	Adjusted Rate (CFS)	Diversion Rate (CFS)	Volume (AF)	Acres	Adjusted Rate (CFS)	Diversion Rate (CFS)	Volume (AF)	Acres	Adjusted Rate (CFS)
	Decreed				Proposed for Lease				Unleased (Remaining Available)			
22-2175A	1.390	304.5	87.0	1.120	1.390	304.5	87.0	1.120	0.000	0.0	0.0	0.000
22-2175B	1.250	273.0	78.0	1.004	0.625	136.5	39.0	0.502	0.625	136.5	39.0	0.502
22-7502	0.800	140.0	40.0	0.515	0.000	0.0	0.0	0.000	0.800	140.0	40.0	0.515
Combined	2.640	717.5	205.0	2.640	2.015	441.0	126.0	1.623	1.425	276.5	79.0	1.017

Note: provided that 2.015 cfs is protected from forfeiture through the lease of water rights 22-2175A and B, but that the rental of these two water rights is limited to a maximum diversion rate of 0.012 cfs and 0.502 cfs, respectively, then no enlargement should occur through the lease of these water rights.

Water rights 22-2184, 2230, 7075, 11147 and 11149 are combined limited to 10.17 cfs, which is the additive diversion rate of rights 2184, 2230 and 7075 (11147 and 11149 provide volume and acres, but no rate), for the irrigation of 1,114.0 acres. Additionally, water right 22-7507 authorizes irrigation of an additional 157 non-overlapping acres, adjacent to water rights 22-2184, 2230, 7075, 11147 and 11149, but through a diversion of water from only two of the three wells associated with these five water rights. Though water right 22-7507 was licensed with a maximum diversion rate that provides 0.02 cfs/acre, in reality, and through both licensing and the adjudication, it was acknowledged that diversions under 22-7507 were accomplished in conjunction with diversions under water rights 22-2184, 2230, 7075, 11147 and 11149, and the combined limited diversion rate for all six water rights was limited to the maximum instantaneous diversion rate from the common wells, which was 10.85 cfs.

In recognition that water rights 22-2184, 2230, 7075, 11147, 11149 and 7507 authorize a maximum diversion rate of 10.85 cfs for the irrigation of a maximum of 1,271.0 acres, the 69.0 acres under the Harvest Heights subdivision, and the remaining (unleased) balance of the water rights, are as follows:

WR #	Diversion Rate (CFS)	Volume (AF)	Acres, Limited	Acres, PPU	Adjusted Rate (CFS)	Diversion Rate (CFS)	Volume (AF)	Acres, Limited	Acres, PPU	Adjusted Rate (CFS)	Diversion Rate (CFS)	Volume (AF)	Acres, Limited	Acres, PPU	Adjusted Rate (CFS)
	Decreed					Proposed for Lease					Unleased (Remaining Available)				
22-2184	3.550	1,085.0	310.0	1,114.0	2.650	0.220	67.2	19.2	69.0	0.160	3.330	1,017.8	290.8	1,045.0	2.490
22-2230	1.680	518.0	148.0	1,114.0	1.260	0.100	32.1	9.2	69.0	0.080	1.580	485.9	138.8	1,045.0	1.180
22-7075	4.940	1,953.0	558.0	1,114.0	4.760	0.300	121.0	34.6	69.0	0.300	4.640	1,832.0	523.4	1,045.0	4.460
22-11147	0.540	168.0	48.0	1,114.0	0.410	0.030	10.4	3.0	69.0	0.030	0.510	157.6	45.0	1,045.0	0.380
22-11149	0.570	175.0	50.0	1,114.0	0.430	0.040	10.8	3.1	69.0	0.030	0.530	164.2	46.9	1,045.0	0.400
Combined	10.170	3,899.0	1,114.0	1,114.0	9.510	0.630	241.5	69.0	69.0	0.600	9.540	3,657.5	1,045.0	1,045.0	8.910
22-7507	3.140	549.5	157.0	157.0	1.340	0.000	0.0	0.0	0.0	0.000	3.140	549.5	157.0	157.0	1.340
Combined	10.850	4,448.5	1,271.0	1,271.0	10.850	0.630	241.5	69.0	69.0	0.600	10.220	4,207.0	1,202.0	1,202.0	10.250

Note: provided that 0.63 cfs is protected from forfeiture through the lease of water rights 22-2184, 2230, 7075, 11147 and 11149, but that the rental of these five water rights is limited to a maximum diversion rate of 0.600 cfs, as outlined above, then no enlargement should occur through the lease of these water rights.

Of additional note, it is presumed that acres associated with the City of Rexburg residential properties that are located within the place of use for the applicant's irrigation water rights will continue to be irrigated through the term of the lease, under Rexburg's municipal water right portfolio. As such, provided the City of Rexburg limits their overall diversions to the maximum diversion rates and diversion volumes authorized on their municipal water rights, it may not constitute an enlargement of either the applicant's water rights, or the City or Rexburg's water rights, if the overall number of acres irrigated from ESPA ground water increases through this lease.

Local Public Interest: Sustainable management of the ESPA ground water resource is in the local public interest. To establish a more informed awareness of the local public interest, comments will be requested from the staff of Water District 100, and IDWR's Eastern Region office.

Beneficial Use/Conservation of Water Resources: Irrigation is a beneficial use.

Department/Watermaster Comments: Water District 100 and IDWR Eastern Region comments requested on October 9, 2019.

Water Supply Bank Evaluation: Subject to favorable water district and regional office comments, it is recommended these leases be approved.

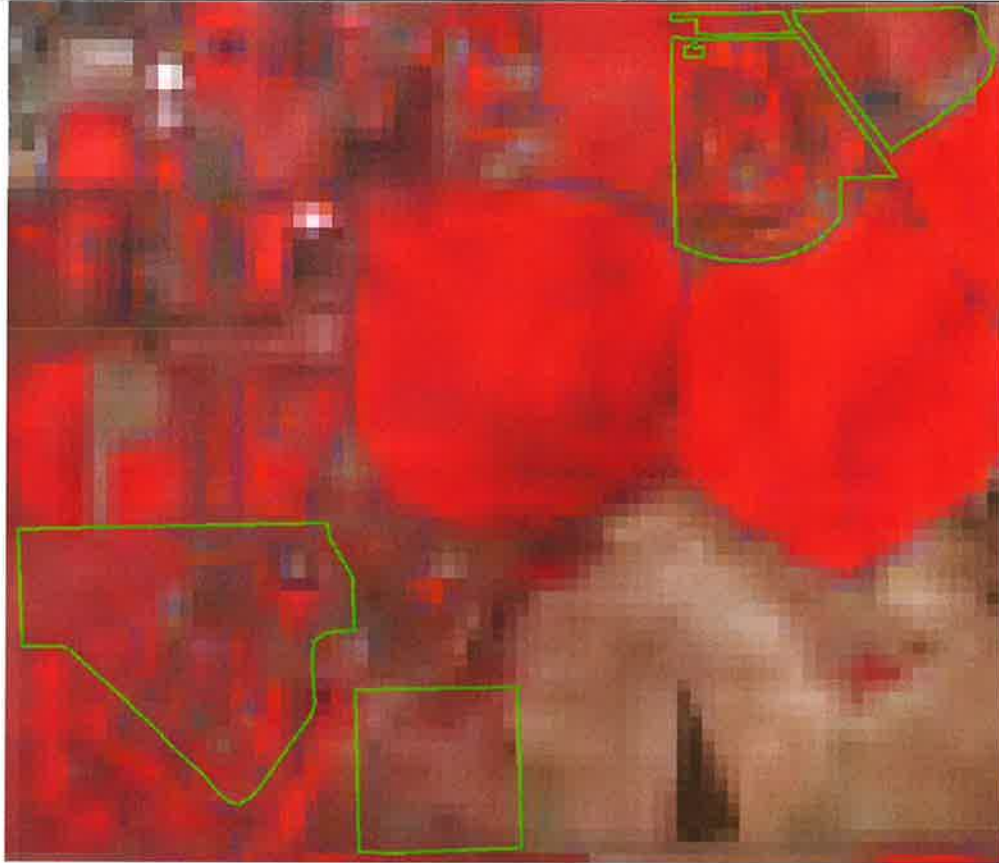
Appendix A – Satellite Imagery Analysis



Satellite Imagery – Summer 2017



Landsat Satellite Imagery – May 27, 2014



Landsat Satellite Imagery – June 12, 2014



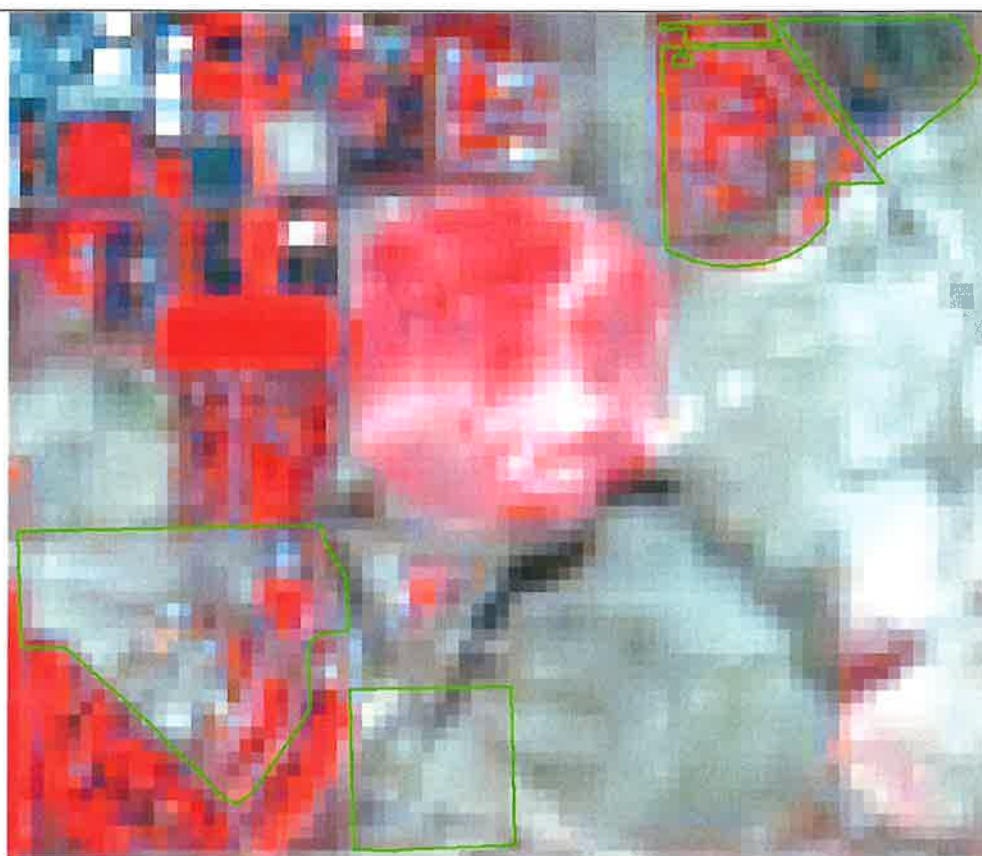
Landsat Satellite Imagery – October 9, 2014



Landsat Satellite Imagery – May 30, 2015



Landsat Satellite Imagery – August 9, 2015



Landsat Satellite Imagery – October 12, 2015



Sentinel Satellite Imagery – June 5, 2016



Sentinel Satellite Imagery – August 24, 2016



Sentinel Satellite Imagery – May 31, 2017



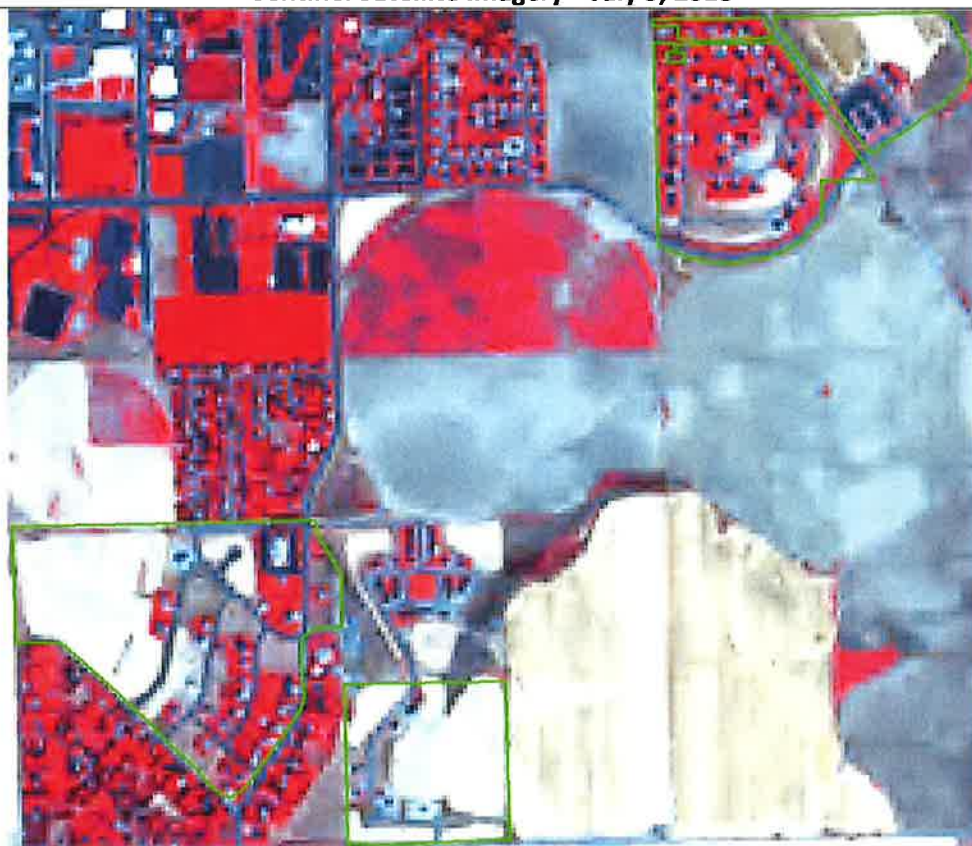
Sentinel Satellite Imagery – September 28, 2017



Sentinel Satellite Imagery – May 26, 2018



Sentinel Satellite Imagery – July 5, 2018



Sentinel Satellite Imagery – September 3, 2018



Sentinel Satellite Imagery – October 8, 2018



Sentinel Satellite Imagery – June 10, 2019

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' <rfsmith727@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: 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' <rfsmith727@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' <rfsmith727@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.

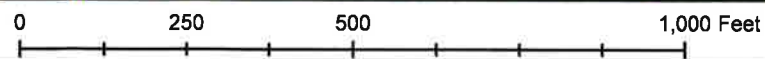
Please let me know if this does not satisfy your requirements for ownership.

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



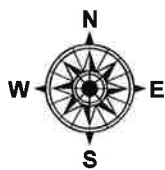


Legend

 Quitclaim Deed -WR to Richard
 Madison Cnty Parcels
 Lots - Richard Smith
 Lots - Not Reserved by Deed
 Lots - Reserved by Deed

 WRPOU 22-2184 etal
 Twp & Rng
 Section
 QQ





WR Ownership Map

Richard Smith

RMEA #15-0014

by: KM

Date: 9/30/2019



Rocky Mountain
ENVIRONMENTAL
ASSOCIATES, INC.

From: Buyer, Remington
Sent: Friday, September 27, 2019 1:55 PM
To: 'Richard Smith' <rfsmith727@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

Buyer, Remington

From: Buyer, Remington
Sent: Thursday, September 5, 2019 10:00 AM
To: 'Richard Smith'
Cc: 'Kristin Moore'
Subject: Information Requested - Water Supply Bank Applications
Attachments: Information Requested - Richard Smith.pdf

Mr. Smith,

Please find attached a copy a letter that is being mailed by our office to you today. The letter is to request additional information that our office must review to continue processing of your 2019 Water Supply Bank lease and rental applications. Our office will suspend further review of your applications for thirty (30) days, to provide you with time to submit to us the requested information.

We look forward to continuing to process your applications once the requested information is received. However we may be unable to continue processing of your applications without the requested information. Please ensure our office receives the requested information no later than October 4, 2019.

Please feel free to contact our office if you have any questions,

Remington Buyer
(208) 287-4918



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

Buyer, Remington

From: Buyer, Remington
Sent: Wednesday, May 1, 2019 12:36 PM
To: 'Richard Smith'
Subject: RE: Water Supply Bank lease applications

Hello Mr. Smith,

Thank you for your email. The following are your three lease presently active Water Supply bank lease applications:

Lease Application ID	Lease Application Water Rights	Lease Application Status
1385	22-2175A	On Hold
1386	22-2175B	On Hold
1387	22-11147, 22-11149, 22-2184, 22-2230, 22-7075, 22-7507	Initiated

We have lease applications 1385 and 1386 on hold, to allow you time to decide whether you wanted to reduce the amount leased under one of the applications, or, whether you would rent additional rate from one of the leases. By your comment below about leasing back to yourself a portion of those rights, I will interpret this to mean we should proceed in fully leasing these water rights into the Bank; I will ensure that processing now begins on leasing water right 22-2175A fully to the Bank, along with the lease of half (39 acres) of water right 22-2175B to the Bank.

Our office will follow up with you if any additional information is required, or once water right lease contracts are available for your consideration.

Regards,

Remington

From: Richard Smith [mailto:rfsmith727@gmail.com]
Sent: Wednesday, May 1, 2019 12:14 PM
To: Buyer, Remington <Remington.Buyer@idwr.idaho.gov>
Subject: Re: Water Supply Bank lease applications

Hi Remington,

I'm confident that I responded to your email, but I can't seem to locate it in my email files.

Just to make sure, I confirm that the information in your April 11 email is correct and that I do wish to put the described rights in the Water Bank.

Application to lease a portion of those rights back to me will be forthcoming.

Thanks.
Richard Smith

Buyer, Remington

From: Buyer, Remington
Sent: Thursday, April 11, 2019 12:34 PM
To: 'rfsmith727@gmail.com'
Subject: FW: Water Supply Bank lease applications

Mr. Smith,

Regarding the IDWR enforcement actions on the lands you own/lease near Rexburg, we spoke this morning and discussed that you would submit [Water Supply Bank applications to rent](#) your own water rights being leased to the Bank, to obtain an authorization to irrigate the lands with notices of violation (NOVs) during 2019. The rental application is hyperlinked above; please print off two applications, one for each property, and request a rental of water rights 35-2184 et. al for those lands.

You and I also spoke about your desire to protect from forfeiture through a lease to the Bank, your right to irrigate 87 acres under water right 22-2175A and your right to irrigate 39 acres under water right 22-2175B. You also mentioned that you require an authorization to divert approximately 800~1000 gallons per minute from the ground water well associated with 22-2175A, 22-2175B and 22-7502 (the latter which is not being leased to the Bank).

Please confirm by way of a reply to this email that this is correct.

You and I also spoke about your need to maintain a diversion rate of approximately 800~1000 gallons per minute (equivalent to approximately 1.78~2.23 cfs) during 2019, at the point of diversion shared by water rights 22-2175A, 22-2175B and 22-7502. Combined, these three water rights that belong to you authorize a maximum diversion rate of 2.64 cfs, or 1,184.9 gallons per minute, as follows:

Water rights, as licensed/decreed					
WRs	Rate	Volume	Acres	Rate/AC	Vol/AC
22-2175A	1.39	304.5	87	0.0160	3.5
22-2175B	1.25	273	78	0.0160	3.5
22-7502	0.8	140	40	0.0200	3.5
Sum	2.64	717.5	205	0.0129	3.5

Based on the above, a lease of 87 + 39 acres of water rights 2175A and B would result in a lease, and remaining balance of unleased water rights, as follows:

Water rights to be leased to the Bank						Water rights not being leased to the Bank					
WRs	Rate	Volume	Acres	Rate/AC	Vol/AC	WRs	Rate	Volume	Acres	Rate/AC	Vol/AC
22-2175A	1.39	304.5	87	0.0160	3.5	22-2175A	0	0	0	0.0000	0
22-2175B	0.63	136.5	39	0.0160	3.5	22-2175B	0.63	136.5	39	0.0160	3.5
22-7502	0	0	0	0.0000	0	22-7502	0.8	140	40	0.0000	0
Sum	1.22	441	126	0.0096	3.5	Sum	1.43	276.5	79	0.0180	3.5

From the above, you can note that a maximum diversion rate of 1.43 cfs would remain available to you, unencumbered by the Water Supply Bank through the lease of portions of water rights 22-2175A and B, which would provide a diversion rate less than what you have indicated you require. The difference between what you would have available during a lease (1.43 cfs) and what you require (1.78~2.23 cfs) is between 0.35 cfs and 0.80 cfs.

Two options thus seem relevant for your consideration:

- Reduce the amount proposed for lease to the Bank, to maintain a higher unencumbered diversion rate at the well common to 22-2175A, 22-2175B and 22-7502; or
- Rent a portion of your own water rights back to yourself at the common well, sufficient to provide the higher diversion rate you require.

Option one could be accomplished if you only proposed to lease into the Bank a maximum of 0.8 cfs and 129.3 af for irrigation of 37 acres under water right 22-2175A, which would allow for 0.8 cfs (and 175.2 af for irrigation of 50 acres) to remain available to you at the common well. However, if 0.8 cfs is diverted under 22-2175A, but not used for the irrigation of 50.0 acres at the place of use authorized under 22-2175A, the Department cannot guarantee that the diversion and non-irrigation of the place of use under 22-2175A fully protects the 175.2 af for irrigation of 50.0 acres under 22-2175A.

Option two could be accomplished if you fully leased into the Bank, and then rented back to yourself 0.8 cfs of water right 22-2175A, for use at the common well. The lease/rental would guarantee that the 175.2 af for irrigation of 50.0 acres under 22-2175A is protected from any notion of forfeiture, while simultaneously making available to you the 1000 gallons per minute that you require at the common well. However, your rental of 175.2 af at \$2/af would incur an annual rental payment of \$350.40.

Please consider the above options and feel free to follow up with me if you would like to discuss further how to proceed with your leases and rentals during 2019.

Regards,

Remington

From: Buyer, Remington
Sent: Friday, March 29, 2019 12:23 PM
To: rfsmith727@gmail.com
Subject: Water Supply Bank lease applications

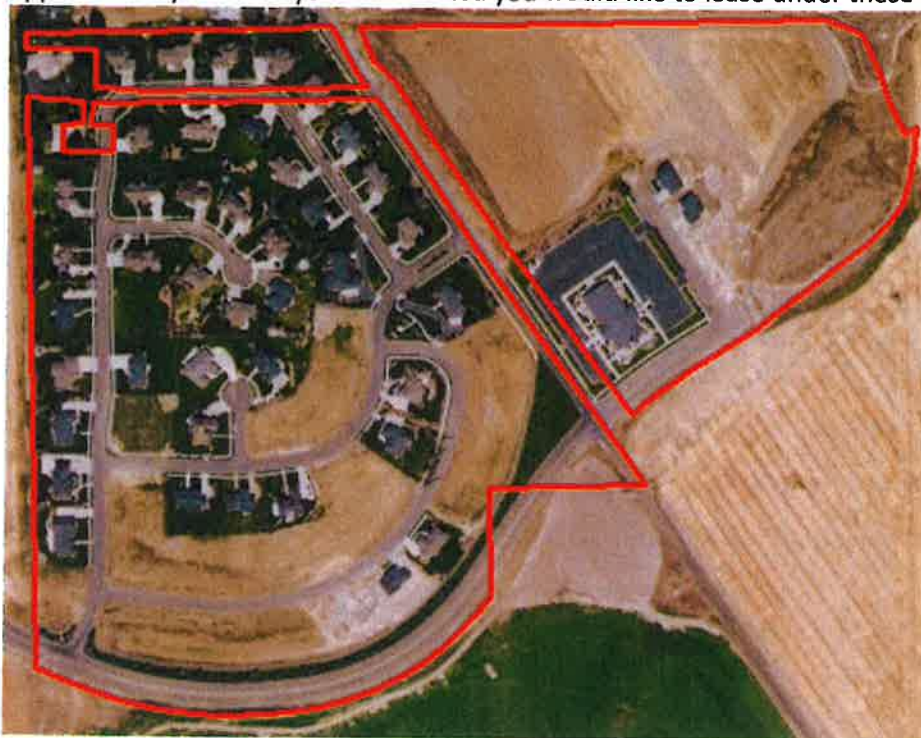
Mr. Smith,

We received your lease applications today at IDWR. Please know, our current administrative process is to require one paper application per water right. You submitted one paper application for numerous water rights. In recognition that you intend to submit for lease portions of the multiple water rights associated with the various places of use for your multiple water rights, we will accept the lease applications as they are. We will make additional copies of your applications here for our water right records; in the future, if you submit lease applications again, **please print off one application per water right.**

Regarding your applications, and the questions posed on your cover letter, please be aware of the following:

- We received two payments of \$250, for a total of \$500. Because water rights 22-2175A and 22-2175B have different places of use, we will apply the \$500 to these two lease applications and they can move forward. However, **we will hold the lease applications for water rights 22-2184 et al. until we receive from you an additional \$500 to cover the filing fees for this stack of water rights.**
- The current rental rate for water rights is \$20/af. Per the volume limits for these water rights, and the ultimate volume amounts that will be leased to the Bank, the Bank will charge \$20 for each acre-foot of the leased portions that might be rented. You will receive 90% of the rental fee.
- You have indicated that you would like to lease portions of each water right to the Bank. However, we need to know how many acres are to be leased from within the places of use for each water right. For water rights 22-2175A and 22-2175B, you've indicated that you would like to lease approximately 78 acres. Water right 22-2175A authorizes irrigation of 87.0 acres, while 22-2175B authorizes irrigation of 78.0 acres. Your map included for water right 22-2175A identifies the entire area as proposed for lease—**do you want to lease into the Bank the entire 87.0 acres for water right 22-**

2175A? Your map for 22-2175B identifies the SWSW quarter-quarter of Section 32, Township 06N, Range 40E, which is 39.0 acres. **Do you want to lease into the Bank 39.0 acres for water right 22-2175B?** Your map for water rights 22-2184, 2230, 7075, 11147 and 11149 identified approximately 80 acres (per the image below) which corresponds with the approximately 75 acres you've indicated you would like to lease under these water rights:



Based on the information you've provided, the amounts of your water rights proposed for lease (and the amounts that will remain available to you if/once they are leased) would be as follows:

Water Right	Decreed / Licensed			Proposed for lease			Remaining Available		
	Div. Rate	Div. Volume	Acres	Div. Rate	Div. Volume	Acres	Div. Rate	Div. Volume	Acres
22-2175A	1.39	304.5	87	Unclear from your application					
22-2175B	1.25	273	78	0.625	136.5	39.0	0.625	136.5	39.0
22-2184 et al.	10.17	3899	1114	0.68	262.5	75	9.49	3636.5	1039

Provided you do not exceed 9.49 cfs for water rights 22-2184 et al, or 0.63 cfs for water right 22-2175B, you should not exceed your authorized amounts under your water rights while they are leased. As we discussed, if there is a short, instantaneous exceedance of these diversion rates when your pumps kick on, but the pumps soon recalibrate to the lower diversion rates, your water use should be compliant with the terms of the Water Supply Bank lease contracts.

Please submit to our office the additional \$500 filing fee so we can move forward in processing lease applications for water rights 22-2184 et al. Also, please confirm the number of acres you would like to lease to the Bank under water rights 22-2175A and 22-2175B, so that we may move forward with processing those applications.

Thank you,

Remington