

STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES

WATER SUPPLY BANK RENTAL AGREEMENT No. 183

RECEIVED  
AUG 15 2017  
DEPT OF WATER RESOURCES

This is to certify that:

PURITY SWEET INC  
315 EAST AVE H  
JEROME, ID 83338

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) |
|-------------------------------|---------------|--------------------|----------------------|-----------------------|------------|
| 51-4037                       | 6/20/1885     | MURPHY HOT SPRINGS | 0.020                | 0.50                  | N/A        |
| <b>Combined Rental Totals</b> |               |                    | <b>0.020</b>         | <b>0.50</b>           | <b>N/A</b> |

**Term of Rental:** This rental shall take effect when all parties have signed it and shall continue in effect until December 31, 2017

**Annual Rental Fee:**

2017: \$0.85

The full fee for the rental of the above-described right(s) is \$0.85 for 2017. The rental fee includes an administrative fee of \$0.85 for 2017. Note that the renter is obligated to pay only the administrative fees associated with the water right(s) 51-4037.

Detailed water right conditions are attached.

STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES  
**WATER SUPPLY BANK RENTAL AGREEMENT**

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:

*Purity Sweet* 8-10-2017  
Signature of Renter Date

*Purity Sweet Matthews* 8-10-2017  
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 *B. Patton* Date 12/26/2017  
BRIAN PATTON, Acting Administrator  
Idaho Water Resource Board

Rental approved by IDWR *By who* Date 12-26-2017

## WATER SUPPLY BANK RENTAL AGREEMENT No. 183

### WATER USE DETAILS

#### LOCATION OF POINT(S) OF DIVERSION

MURPHY HOT SPRINGS      SWNWNW      Sec. 24, Twp 16S, Rge 09E,      OWYHEE County

**Beneficial Use**  
COMMERCIAL

**Diversion Rate**  
0.02 CFS

**Volume**  
0.50 AF

#### BENEFICIAL USE & SEASON OF USE

**Water Right No.**      **From**      **To**  
51-4037      1/1      12/31

#### RENTERS PLACE OF USE: COMMERCIAL

| Twp | Rng | Sec | NE |    |    |    | NW |    |    |    | SW |    |    |    | SE |    |    |    | Totals |
|-----|-----|-----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|--------|
|     |     |     | NE | NW | SW | SE | NE | NW | SW | SE | NE | NW | SW | SE | NE | NW | SW | SE |        |
| 16S | 09E | 24  |    |    |    |    |    | X  |    |    |    |    |    |    |    |    |    |    | X      |

#### 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 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.
4. Renter agrees to comply with all applicable state and federal laws while using water under this agreement.
5. 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.
6. 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. This rental may be ineffective if the mitigating water right is not in priority.
7. Failure of the renter to comply with the conditions of this agreement is cause for the Director to rescind approval of the rental agreement.
8. The renter must diligently pursue a permanent water right to provide for the uses authorized under this rental agreement.
9. Commercial use is for a water bottling plant.
10. In the event that continued water use is not authorized, the renter agrees to hold the Board, the Director and the state of Idaho harmless from any claim for reimbursement or expenses associated with the development of new and supplemental water uses.

11. Future rentals for the use authorized under this agreement may be subject to further review and notice requirements.
12. Future rentals for the purpose authorized under this rental agreement may require review of historic beneficial use associated with the water right rented, to determine the consumptive volume of water available.



# Idaho Water Resource Board Water Supply Bank Rental Agreement

Effective until December 31, 2017

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



-  Rental Point of Diversion
-  Rental Place of Use
-  Townships
-  PLS Sections



0 100 200 Feet

STATE OF IDAHO  
WATER RESOURCE BOARD

RECEIVED

APR 26 2017

DEPARTMENT OF  
WATER RESOURCESAPPLICATION TO RENT WATER  
FROM THE BOARD'S WATER SUPPLY BANK

Applicant Name:

Matthew Olivas / Penny Sweet

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](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)

STATE OF IDAHO  
WATER RESOURCE BOARD

Application to Rent Water (Continued)

1. CONTACT INFORMATION

A. Applicant Matthew Olivas  
 Mailing Address 315 EST A# Jerome ID 83338  
 Street City State Zip Code  
 Email Address \_\_\_\_\_ Phone Number 208-404-6190

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 \_\_\_\_\_ Professional Title owner and President  
 Organization \_\_\_\_\_ Relationship to Applicant \_\_\_\_\_  
 Mailing Address \_\_\_\_\_  
 Email Address \_\_\_\_\_ Phone Number \_\_\_\_\_

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**:

Bottling

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

| Desired Rate<br>(Cubic Feet/Second) | Desired Volume<br>(Acre-Foot) | Minimum Rate*<br>(Cubic Feet/Second) | Minimum Volume*<br>(Acre-Foot) | Desired Acres<br>(if applicable) |
|-------------------------------------|-------------------------------|--------------------------------------|--------------------------------|----------------------------------|
| <u>0.02</u> CFS                     | <u>0.5</u> AF                 | <u>NA</u> CFS                        | <u>NA</u> AF                   | <u>NA</u> 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<br>(month/day/year) | Latest Possible Start Date<br>(month/day/year) | *Mark Desired Rental Duration<br>(Calendar Years) |                            |                            |                            |                            | **Applicant's preference if rental application cannot be processed prior to the latest possible start? |                                                                     |
|----------------------------------------|------------------------------------------------|---------------------------------------------------|----------------------------|----------------------------|----------------------------|----------------------------|--------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------|
| <u>1-1-2019</u>                        | <u>12-31-2019</u>                              | <input type="checkbox"/> 1                        | <input type="checkbox"/> 2 | <input type="checkbox"/> 3 | <input type="checkbox"/> 4 | <input type="checkbox"/> 5 | <input type="checkbox"/> Process application as soon as possible                                       | <input checked="" 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):

Bottled at the Source

- 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 |
|-----------------|-------------------|-------------------------------------------|
|                 | Spring geothermal |                                           |
|                 |                   |                                           |
|                 |                   |                                           |
|                 |                   |                                           |

*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 ~~WA~~ (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**.

- 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:

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<br>(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) |
| 511-4037                                                                                                                                                                          | Recreational  | 0.02                 | 0.5         | NA         |                                                                                                                                | 0.02                             | 0.5         | NA         |
|                                                                                                                                                                                   |               |                      |             |            |                                                                                                                                |                                  |             |            |
|                                                                                                                                                                                   |               |                      |             |            |                                                                                                                                |                                  |             |            |
|                                                                                                                                                                                   |               |                      |             |            |                                                                                                                                |                                  |             |            |
|                                                                                                                                                                                   |               |                      |             |            |                                                                                                                                |                                  |             |            |
|                                                                                                                                                                                   |               |                      |             |            |                                                                                                                                |                                  |             |            |
|                                                                                                                                                                                   |               |                      |             |            |                                                                                                                                |                                  |             |            |
|                                                                                                                                                                                   |               |                      |             |            |                                                                                                                                |                                  |             |            |
| 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                                                                                                                          |                                  |             |            |
|                                                                                                                                                                                   |               |                      |             |            |                                                                                                                                | 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**:

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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**:

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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:

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- 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:

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- 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.

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- D. Additional Information

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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

Matthew Davis / Rudy Sweet  
Printed Name of Applicant

4-15-2017  
Date

  
Signature of Representative

Matthew Davis / Rudy Sweet  
Printed Name of Representative

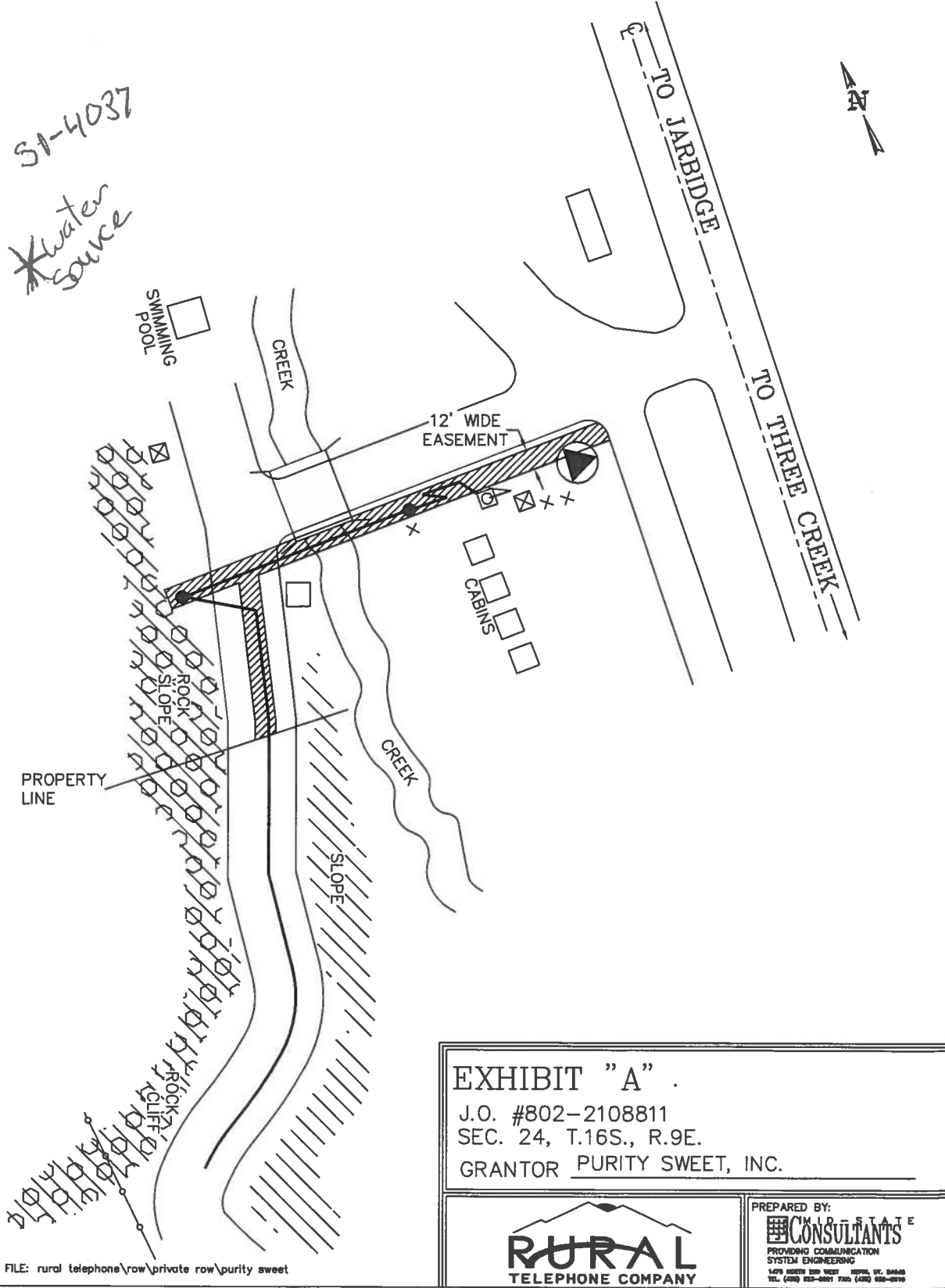
4-15-2017  
Date

Mail to:

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

SI-4037

\*water  
source



# EXHIBIT "A"

J.O. #802-2108811  
SEC. 24, T.16S., R.9E.

GRANTOR PURITY SWEET, INC.



PREPARED BY:  
**CONSULTANTS**  
PROVIDING COMMUNICATION  
SYSTEM ENGINEERING  
1478 NORTH 2ND WEST SUITE 101, DALLAS, TX 75201  
TEL. (409) 922-0071 FAX (409) 922-0070



State of Idaho

## DEPARTMENT OF WATER RESOURCES

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

Phone: (208) 287-4800 • Fax: (208) 287-6700 • Website: [www.idwr.idaho.gov](http://www.idwr.idaho.gov)

C.L. "BUTCH" OTTER  
Governor

GARY SPACKMAN  
Director

December 26, 2017

PURITY SWEET INC  
315 EAST AVE H  
JEROME ID 83338

**RE: RENTAL OF WATER FROM THE WATER SUPPLY BANK  
WATER RIGHT NO. 51-4037**

Dear Renter:

Please find enclosed a receipt in the amount of \$0.85 and a copy of a fully executed Water Supply Bank Rental Agreement in connection with the rental of 0.50 acre-feet of water for commercial use during 2017. 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.

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.

Condition 8 of this rental agreement states, "**The renter must diligently pursue a permanent water right to provide for the uses under this agreement.**" The Department of Water Resources received an incomplete application for permit for this water use on August 31, 2017. The department has requested additional information to complete this filing on September 7, 2017 and again on October 2, 2017. On December 7, 2017 the Department sent you an application filled out with what we believe to be your intent for your review, correction and signature. **Note a complete application has not yet been received by the department.** Until the completed application is received by the department, condition 8 of Rental Agreement 183 is not being met. You will need to review, correct, sign and return the application to comply with condition 8 of this rental agreement.

Future rentals of water right 51-4037 for this use will not be considered for approval.

If you have any questions, please contact this office at (208) 287-4910.

Sincerely,

Clay Webster  
Water Rights Supervisor  
Water Supply Bank

Enclosure(s): Receipt No. C103981  
Rental Agreement (copy)

c: Sascha Marston – Fiscal  
Angie Grimm – IDWR Western Regional Office  
Cherie Palmer - IDWR Compliance Bureau

## Webster, Clay

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**From:** Webster, Clay  
**Sent:** Monday, October 02, 2017 12:37 PM  
**To:** Marston, Sascha  
**Subject:** Refund of overpayment Receipt #C103981

Sascha,

This one might seem familiar. Mr. Olivas payed too much again. I need to request a refund of \$9.15. Be sent to;

PURITY SWEET INC  
315 EAST AVE H  
JEROME ID 83338

Thanks  
Sincerely,  
Clay Webster  
Water Resource Agent Sr.  
[clay.webster@idwr.idaho.gov](mailto:clay.webster@idwr.idaho.gov)  
208-287-4910  
Idaho Department of Water Resources (IDWR)

## Webster, Clay

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**From:** Grimm, Angie  
**Sent:** Monday, August 07, 2017 9:01 AM  
**To:** Keen, Shelley; Buyer, Remington; Miller, Nick  
**Cc:** Webster, Clay  
**Subject:** RE: Purity Sweet  
**Attachments:** DOC007.pdf

All,

The attached letter is going out in today's mail. I'll keep everyone posted on the response. Thank you everyone for the input, perspective, and discussion on this matter. This should be an interesting one moving forward...

Regards,  
Angie

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**From:** Keen, Shelley  
**Sent:** Thursday, August 03, 2017 4:38 PM  
**To:** Buyer, Remington <Remington.Buyer@idwr.idaho.gov>; Grimm, Angie <Angie.Grimm@idwr.idaho.gov>; Miller, Nick <Nick.Miller@idwr.idaho.gov>  
**Cc:** Webster, Clay <Clay.Webster@idwr.idaho.gov>  
**Subject:** RE: Purity Sweet

Remington,

This is a case in which we don't want to be putting a different foot forward depending on which program we are working in. We need our approaches to evaluation of injury and enlargement to be consistent among our programs. I've not had the time or the need, so far, to get into the matter in detail, but Nick and Angie have consulted with Jeff and me, and we are comfortable with their general approach. I've left Clay a note asking him to check in with me. My intention is to ask him not to complete a decision on the rental in this matter until the transfer process has moved further toward some resolution. The requested information is likely to be useful for both the transfer process and the WSB process. If we need to look at the proposed rental in more detail, we can do so next week. Meanwhile, let's not delay the letter regarding the transfer. The transfer has been outstanding too long, and it needs resolution.

Shelley

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**From:** Buyer, Remington  
**Sent:** Thursday, August 03, 2017 4:16 PM  
**To:** Grimm, Angie <[Angie.Grimm@idwr.idaho.gov](mailto:Angie.Grimm@idwr.idaho.gov)>; Keen, Shelley <[Shelley.Keen@idwr.idaho.gov](mailto:Shelley.Keen@idwr.idaho.gov)>; Miller, Nick <[Nick.Miller@idwr.idaho.gov](mailto:Nick.Miller@idwr.idaho.gov)>  
**Subject:** RE: Purity Sweet

Angie,

Your review was succinct and good. The following items arose in my mind as I reviewed your memo:

Facts:

- The condition on WR 51-4037 defining commercial use for a “pool, bath, internal lodge use and 1 trailer” does limit use of water to only these defined places. Commercial water bottling is not a decreed part of the commercial nature of use and is not presently an authorized commercial use under this water right,
- A transfer (or WSB lease/rental) is necessary to authorize water bottling as part of the commercial nature of use on water right 51-4037,

Questions:

- Does the addition of ‘water bottling’ to the condition limiting the extent of authorized commercial use truly constitute a change in the commercial nature of use of the right 51-4037? Is it inappropriate to consider it to be a redefinition of the authorized extent of the decreed commercial nature of use (and therefore not an actual change in nature of use)?
- If adding ‘water bottling’ is considered to be a change in commercial nature of use, does documenting the historic extent of commercial beneficial use require documenting historic consumptive use? Or, could the historic extent of commercial beneficial use be further defined by establishing a total annual diversion volume of water (not the same as water consumed)? For example, could the extent of commercial historic use could be based on instantaneous diversions of water multiplied by time in a year that water was actively diverted to establish at a maximum diversion volume for the commercial use?
- If an acceptable water volume can be calculated based on historic diversion practices, can water right 51-4037 be redefined through Transfer 78340 so that the commercial condition states something like “pool, bath, internal lodge use, 1 trailer and water bottling operations” and a total annual diversion volume limit is applied to constrain all commercial diversions to a non-enlarging volume limit of water?
- If Transfer 78340 does not authorize water bottling (and Purity Sweet’s request is subsequently denied), should the Water Supply Bank consider a future lease/rental that seeks an authorization similar to Transfer 78340?
- If it is inappropriate for the Bank to authorize a future water bottling rental (to be consistent with our review approach under Transfer 78340), does the Department need to take an action in the event that Mr. Olivas continues to operate a water bottling operation without authorization?

Remington  
287-4918

**From:** Grimm, Angie

**Sent:** Thursday, August 03, 2017 2:41 PM

**To:** Buyer, Remington <[Remington.Buyer@idwr.idaho.gov](mailto:Remington.Buyer@idwr.idaho.gov)>; Keen, Shelley <[Shelley.Keen@idwr.idaho.gov](mailto:Shelley.Keen@idwr.idaho.gov)>; Miller, Nick <[Nick.Miller@idwr.idaho.gov](mailto:Nick.Miller@idwr.idaho.gov)>

**Subject:** FW: Purity Sweet

Gentleman,

I apologize. I neglected to include a copy of the 11/29/2006 letter to Chris Meyer I referenced in the document I sent earlier this afternoon. I realize you may have found this letter in the applicable water right file documents, but just in case I've attached it to this email too.

Regards,  
Angie

Angela M. Grimm, P.G.  
Water Rights Supervisor  
IDWR - Western Region  
2735 Airport Way  
Boise, ID 83705-5082  
(208) 334-2190 phone  
(208) 334-2348 fax

**From:** Grimm, Angie  
**Sent:** Thursday, August 03, 2017 1:24 PM  
**To:** Buyer, Remington <[Remington.Buyer@idwr.idaho.gov](mailto:Remington.Buyer@idwr.idaho.gov)>  
**Cc:** Keen, Shelley <[Shelley.Keen@idwr.idaho.gov](mailto:Shelley.Keen@idwr.idaho.gov)>; Miller, Nick <[Nick.Miller@idwr.idaho.gov](mailto:Nick.Miller@idwr.idaho.gov)>  
**Subject:** RE: Purity Sweet

Remington,

Attached is a letter I propose to send (on Monday 8/7/17) to Purity Sweet, Inc. requesting additional information to continue evaluation of Transfer No. 78340. The transfer application and all correspondence regarding transfer processing to date are scanned and profiled (available through PCDocs now - via WR Info Search Workflow tomorrow) if you wish to review. I've also attached a document summarizing the transfer proposal, relevant statutes/policy memos/etc., policy interpretation, and proposed course of action regarding this transfer proposal. Since policy interpretation and processing of the transfer may have some effect on processing the Water Supply Bank rental application, I thought summarizing this information and providing it to you and Shelley Keen (cc'd in this email) would be of some value. Based on my understanding of the proposed change to the commercial use of the right, both in the transfer and through the rental, I do have some concern enlargement may occur if water bottling occurs without an equivalent reduction in use currently authorized by right 51-4037. This concern is the basis for the information request I propose to send out Monday. There may also be concerns with injury or other I.C. § 42-222 criteria to be evaluated prior to a transfer authorization, but I've focused my request on the apparent enlargement concern before completing evaluation of other factors as I see the enlargement concern as the most evident. Should the enlargement concern be addressed by the applicant, I anticipate publication of the transfer proposal with associated comment letters to interested parties, as well as a potential contested case process, will play a large part in consideration of the other criteria to be evaluated.

I hope these comments are helpful in your review of the rental. Please let me know if you have any questions on comments on my proposed course of action or any of the documents I've attached to this email.

Regards,  
Angie

Angela M. Grimm, P.G.  
Water Rights Supervisor  
IDWR - Western Region  
2735 Airport Way  
Boise, ID 83705-5082  
(208) 334-2190 phone  
(208) 334-2348 fax

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**From:** Buyer, Remington  
**Sent:** Tuesday, July 25, 2017 4:14 PM  
**To:** Grimm, Angie <[Angie.Grimm@idwr.idaho.gov](mailto:Angie.Grimm@idwr.idaho.gov)>  
**Cc:** Miller, Nick <[Nick.Miller@idwr.idaho.gov](mailto:Nick.Miller@idwr.idaho.gov)>  
**Subject:** Purity Sweet

Angie,

Attached is a draft 2017 rental agreement, map and review memo for Purity Sweet Inc. Purity Sweet owns property (and appurtenant water right 51-4037) in Murphy Hot Springs, in Owyhee County. Historically, water was diverted from a spring for use in conjunction with a commercial venture (hot springs resort), however in the mid 1990s, the current owner began bottling spring water for sale and distribution. They applied for a permit (51- 7362: denied) and they followed that with a transfer (78340) for a portion of 51-4037 (assigned to you).

The lease and rental will conclude at the end of 2017 and I anticipate, if the transfer is not processed prior to next year, they will reapply for another five year lease/rental transaction. I don't foresee there being a reason for the Bank to not reconsider a future lease/rental of this water right, however we may advertise it to address local public interest concerns. In advance of the future rental (or review of Transfer 78340), I'm wondering if you (or other Western region staff) have any comments or recommendations for the 2017 rental?

Thanks!

Remington  
287-4918



State of Idaho

## DEPARTMENT OF WATER RESOURCES

Western Region • 2735 Airport Way • Boise, Idaho 83705-5082

Phone: (208) 334-2190 • Fax: (208) 334-2348 • Website: [www.idwr.idaho.gov](http://www.idwr.idaho.gov)

C.L. "BUTCH" OTTER  
Governor

GARY SPACKMAN  
Director

August 7, 2017

PURITY SWEET INC  
315 E AVE H  
JEROME ID 83338

### RE: Transfer Application No. 78340

Dear Mr. Olivas:

The Idaho Department of Water Resources (IDWR) is currently reviewing the above referenced transfer application proposing to redefine the nature of use of water right 51-4037 to authorize a commercial water bottling operation. The water bottling operation has been authorized for several years through Water Supply Bank lease and rental, but a more permanent water right authorization is needed if water bottling is proposed to continue. The transfer application was filed to request such authorization, but additional information is needed before full evaluation pursuant to Idaho Code §42-222 criteria can occur. Three previous requests for additional information were sent on 7/20/2011, 2/7/2013, and 6/5/2013. The response received was insufficient. Based on information submitted so far, the application would not be approved. This letter serves as one final request for additional information before a denial is ultimately issued.

Per Idaho Code §42-222, IDWR must evaluate several factors in consideration of a proposed change to an existing water right, one of which is enlargement of historic use. Review of enlargement may include evaluation of whether the historic consumptive use of a right will be increased by the proposed change. IDWR's previous requests centered largely on the need for additional information to assist in evaluation of this criteria. The amended transfer application dated 12/29/2011 included an affidavit of Michael Farnsworth stating the maximum annual consumptive volume (since December 2003) use of right 51-4037 was approximately two (2) acre feet. The following additional information is needed to evaluate enlargement:

- Additional explanation supporting the claim that the commercial uses currently authorized by water right 51-4037 (pool, baths, internal lodge use, and 1 trailer) result in two (2) acre feet of consumptive use. Historically, these uses have been recognized as mostly non-consumptive.
- Additional information identifying which of the currently authorized uses will cease or be reduced such that the new use of bottling water will not increase the total consumptive use for all uses to more than the two (2) acre feet historically used.

The requested additional information must be submitted to demonstrate the new use would not result in enlargement. Otherwise the application will be denied. Alternatively, you may withdraw the transfer application (form enclosed) and file an application for permit (form enclosed) to establish a new water right for the water bottling commercial use. If an application for permit is filed and the transfer application is withdrawn, the filing fee paid for the transfer may be used towards the filing fee for the application for permit.

Purity Sweet, Inc.  
August 7, 2017  
Page 2 of 2

**The additional information requested or a withdrawal of transfer with a complete application for permit must be received within the next thirty (30) days. Without a timely reply, IDWR will issue a preliminary order to deny the transfer application. The application fee will not be refunded (or used for another filing) for a denied application.**

IDWR forms and other information are available on the Internet at [www.idwr.idaho.gov](http://www.idwr.idaho.gov). Please contact me at 208-334-2190 if you have any questions. Thank you for your attention to this matter.

Regards,



Angela M. Grimm, P.G.  
Water Rights Supervisor

Enclosure(s): Withdrawal of Application for Transfer of Water Right(s)  
Application for Permit and Instructions

**COPY**



State of Idaho

## DEPARTMENT OF WATER RESOURCES

322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720 0098

Phone: (208) 287-4800 • Fax: (208) 287-6700 • Website: [www.idwr.idaho.gov](http://www.idwr.idaho.gov)

C.L. "BUTCH" OTTER  
Governor

GARY SPACKMAN  
Director

July 27, 2017

PURITY SWEET INC  
315 EAST AVE H  
JEROME ID 83338

RE: **APPLICATION TO RENT WATER FROM THE WATER SUPPLY BANK  
WATER RIGHT NO. 51-4037**

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

Dear Applicant:

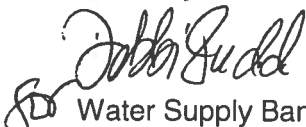
The Department of Water Resources acknowledges receipt of your application to rent water from the Water Supply Bank. **I have enclosed a Water Supply Bank Rental Agreement for your review and signature.** Upon signature and return of the original agreement, together with the rental fee described below, 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 **\$8.50** was calculated based on the current rental rate of \$17.00 per acre-foot times a diversion volume of 0.50 acre-feet. Since you are both the lessor and the renter of the right, **you are only obligated to pay the 10% administrative fee or \$0.85.** An annual payment shall be received by the Department prior to the execution of this agreement and prior to January 1 in all subsequent years for the duration of the rental period. The agreement will be void if payment is not received prior to the due date in a given year. If you would like to terminate the agreement prior to the end of the rental period, you must submit written notice of your intent to the Department at least 30 days prior to the rental fee due date.

**Please send a check for \$0.85** made payable to the Idaho Department of Water Resources, **together with the signed rental agreement, within 14 days** so I can complete processing.

If you have any questions, please contact this office at (208) 287-4800.

Sincerely,



Water Supply Bank

Enclosure

c: IDWR Front Desk

## Memorandum

**To:** Water Rights 51-4037

**From:** Remington Buyer

**Date:** July 25, 2017

**Re:** Water Supply Bank Rental Application 835

**Purpose/Narrative:** On April 26, 2017, the Department received from Matthew Olivas / Purity Sweet, an application to rent water right 51-4037 from the Water Supply Bank for 2017. Mr. Olivas is the President of Purity Sweet, Inc, a registered Idaho business entity. Purity Sweet Inc owns title to both land in the town of Murphy Hot Springs, in Owyhee County, as well as to water right 51-4037, which is appurtenant to the aforementioned land in Murphy Hot Springs.

The SRBA decree for water right 51-4037 authorizes diversion of water from Murphy Hot Springs via a single point of diversion in the SW QQ of the NWNW QQ of Township 16S, Range 09E, Section 24 of Owyhee County. The decree for 51-4037 specifies that 0.04 cfs of spring water can be diverted year-round (01/01 – 12/31) for commercial purposes and 0.02 cfs can be diverted year-round for domestic purposes, for a total of 0.06 cfs year-round use, all within the same NWNW QQ of T16S, R09E, S24. A comment on the decree clarifies that commercial use is for a pool, baths, a lodge and a trailer.

The SRBA claim for water right 51-4037 was originally filed 01/21/1994 by Harry and Anita Showalter, and their claim listed a single POD in the NWNW QQ. The claim also listed that spring water was beneficially used for domestic, heating and commercial purposes, including the operation of a hot spring bathing pool, and that total consumptive uses were de minimis. In addition to 51-4037, water right 51-10220 (decreed to Janet O’Crowley) also authorizes diversion of spring water for year-round domestic purposes with the same NWNW QQ of T16S, R09E, S24. Water rights 51-4037 and 51-10220 share the same priority date: 06/20/1885. The property serviced with domestic water under 51-10220 is also authorized to irrigate one acre using waste water received from the Olivas / Purity Sweet property (decreed water right 51-7138).

Following the SRBA claim filing by the Showalters in January 1994, the property and water rights were thereafter sold to Sylvia Olivas in February 1994. The relationship between Sylvia Olivas and Matthew Olivas is unclear, however Mr. Olivas represented Sylvia Olivas on the 1994 document of sale. However documentation is clear that Mr. Olivas / Purity Sweet acquired title to the property and water rights through a successful bid as part of an auction of the property held by the Owyhee County Sheriff’s office on February 4, 2005.

The SRBA review of the claim for 51-4037 revealed that Mr. Olivas was using Murphy Hot Springs water to operate a water bottling facility and to irrigate his property, which were not authorized water uses under 51-4037. Mr. Olivas subsequently filed applications for permit 51-7361 and 51-7363 (for irrigation) and 51-7362 (for commercial use as part of a water bottling plant). Applications for permit 51-7361 and 51-7363 were voided by the Department and 51-7362 was denied in 1997. Backfile documentation for water right 51-4037 also indicated that disagreements over the diversions of Murphy Hot Springs water have arisen between Mr. Olivas and the owners/occupants of an adjacent (Scroggins/O’Crowley) property.

These following issues are addressed as part of this 2017 rental request review for water right 51-4037:

- That Mr. Olivas / Purity Sweet's operation of a water bottling facility might cause injury to water rights 51-10220 and 51-7138; and,
- That there are not one, but two springs, which service water to water rights 51-4037 and 51-10220;

**Authority to File:** Applicant is registered with the Idaho Secretary of State's Office as the President of Purity Sweet Inc. and he is the registered owner of the property in Owyhee County to which water right 51-4037 is appurtenant, which is where the rental is intended. No concerns about applicant's authority to file this rental request.

**Water Right Validity/Forfeiture Evaluation:** Water right 51-4037 was decreed in 2003. In 2009, an application to lease into the Bank 0.02 cfs of commercial use (50% of decreed 0.04 cfs commercial diversion rate) was processed by the Water Supply Bank. The domestic use was not proposed for lease. The water right has remained leased to the Bank since that time. No concerns about forfeiture.

**Injury Evaluation:** A review of IDWR's denial of application for permit 51-7362 and SRBA backfile for water right 51-4037 suggests that an injury evaluation for this rental requires consideration of whether water use under this rental will cause injury to water rights 51-10220 and 51-7138 (on the former Scroggins/O'Crowley property, now in the name of Justin and David Herold).

Water right 51-7138 authorizes irrigation of the Herold's property with waste water, released from the hot tubs or pool on the Olivas / Purity Sweet property. A waste-water user cannot compel a senior water user to continue wasting water, hence, no injury can occur through a change in deliveries of water to water right 51-7138. However, water right 51-10220 is equal in priority to water right 51-4037 and the lease/rental of water right 51-4037 must not unacceptably impair water right 51-10220.

Water right 51-10220 authorizes the diversion of 0.01 cfs year-round for domestic purposes on the property adjacent and north of the Olivas / Purity Sweet property. The water right backfile indicates that previous owners of this property have experienced interrupted and intermittent deliveries of water from the Hot Springs, allegedly during times when water was being bottled in the bottling facility. The intended use of rental water is to authorize a commercial bottling operation on the applicant's property, hence, it is possible that the rental could impact water deliveries under water right 51-10220.

However, it is also possible that disagreement over water deliveries from the Murphy Hot Springs may now be resolved; a letter from Brockway Engineering (dated December 1, 1997) provides an engineering recommendation on how to improve diversions and deliveries from Murphy Hot Springs to water rights 51-10220 and 51-4037, and 2011 correspondence between IDWR and the Owyhee County Sheriff's Office outlines language for a memorandum of understanding (MOU) related to the diversions of water from Murphy Hot Springs for water rights 51-10220 and 51-4037.

Presently, it is not evident that injury will necessarily occur if a rental for commercial bottling purposes is reauthorized for water right 51-4037 during 2017 and the Water Supply Bank can reauthorize the rental, conditioned upon the reserved right of the current owner/occupants of the Herold property to petition the Director to revoke or modify this rental, upon a showing of injury.

**Enlargement of Use:** Provided that the maximum diversion of water from the Murphy Hot Springs remains below 0.04 cfs, and that no more than 0.02 cfs is delivered to the bottling facility, no enlargement in the diversion rate of water right 51-4037 should occur through this rental. A question may be posed about the

enlargement potential associated with leasing into the Bank a historically non/low consumptive commercial use of water (associated with the operation of a hot springs resort) and renting it out for a high/fully consumptive commercial use (associated with the operation of a water bottling facility). However, there being no change in nature of use proposed under this rental, this question does not require a full examination and determination at the present time.

**Local Public Interest:** There are no concerns that the intended use of rental water will negatively impact local recreational, fish and/or wildlife resources, nor is it evident that the use of rental water will negatively impact local economics and/or water users.

**Beneficial Use/Conservation of Water Resources:** Though the efficiency of the diversion and water delivery system is questionable, there are no concerns about the diversion rate and/or diversion volume and system efficiency contemplated under this rental.

**Department/Watermaster Comments:** This rental is not located within a Water District. Comments will be requested from IDWR's Western Regional Office, where Transfer #78340 is currently active and pending review.

**Water Supply Bank Evaluation:** Absent compelling information to dispute the findings above, the Bank is prepared to reauthorize a rental of water right 51-4037 by Purity Sweet, for commercial water bottling operations on their property. However, the matter of there being two springs (and only one authorized point of diversion) remains unaddressed. The appropriate forum to rectify this discrepancy is through a formal transfer process.

A formal review of Transfer #78340 is to be undertaken by IDWR Western Regional staff. It is presumed that the purposes of Transfer #78340 are analogous to this lease/rental transaction (proposing for a portion of water right 51-4037 to be permanently altered so as to authorize commercial water bottling operations). Because the lease of water right 51-4037 to the Water Supply Bank will conclude at the end of 2017, this rental will only be authorized until the 2017. Any future lease and rental of a portion of water right 51-4037, in conjunction with water bottling operations, should ensure that it does not unnecessarily complicate the processing of Transfer #78340. It may even be advantageous to condition water user under this 2017 rental with language that can assist in the future review and processing of Transfer #78340 and the Bank can consider any conditional language recommended by IDWR water rights section staff.

## Buyer, Remington

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**From:** Buyer, Remington  
**Sent:** Tuesday, July 25, 2017 4:14 PM  
**To:** Grimm, Angie  
**Cc:** Miller, Nick  
**Subject:** Purity Sweet  
**Attachments:** Application Review Memo .docx; RentalMap.pdf; Report, Rental Agreement.docx

Angie,

Attached is a draft 2017 rental agreement, map and review memo for Purity Sweet Inc. Purity Sweet owns property (and appurtenant water right 51-4037) in Murphy Hot Springs, in Owyhee County. Historically, water was diverted from a spring for use in conjunction with a commercial venture (hot springs resort), however in the mid 1990s, the current owner began bottling spring water for sale and distribution. They applied for a permit (51- 7362: denied) and they followed that with a transfer (78340) for a portion of 51-4037 (assigned to you).

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Thanks!

Remington  
287-4918