

SEP 01 2017

DEPARTMENT OF  
WATER RESOURCES**WATER SUPPLY BANK LEASE CONTRACT No. 665**

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

**LESSOR:** WEST OF FIRST LLC  
9533 W PICO BLVD 2ND FLOOR  
LOS ANGELES, CA 90035

**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 Thursday, May 11, 2017.
3. The Director of the Idaho Department of Water Resources has reviewed the application for compliance with the Water Supply Bank rules and has approved the Lease subject to conditions listed below.

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

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

**Summary of Water Rights or Portions Leased to the Bank**

Water Right No.	Priority Date	Source	Diversion Rate (CFS)	Diversion Volume (AF)	Acres (AC)
37-21817	3/24/1883	BIG WOOD RIVER, tributary to MALAD RIVER	0.310	Not Stated	29.00
37-21815	6/30/1884	BIG WOOD RIVER, tributary to MALAD RIVER	0.490	Not Stated	29.00
37-21813	9/18/1885	BIG WOOD RIVER, tributary to MALAD RIVER	0.250	Not Stated	29.00
37-21811	5/1/1888	BIG WOOD RIVER, tributary to MALAD RIVER	0.250	Not Stated	29.00
<b>Combined Lease Totals</b>			<b>1.300</b>	<b>Not Stated</b>	<b>29.00</b>

**Summary of Water Rights Elements Rentable From the Bank**

Water Right	Diversion Rate (CFS)	Diversion Volume (AF)	Acres (Limited) (AC)	Rate Per Acre (CFS/AC)	Volume Per Acre (AF/AC)
37-21817	0.250	101.5	29.00	0.010	3.5
37-21815	0.390	101.5	29.00	0.015	3.5
37-21813	0.200	101.5	29.00	0.008	3.5
37-21811	0.200	101.5	29.00	0.008	3.5
<b>Combined Limit Totals</b>	<b>1.040</b>	<b>101.5</b>	<b>29.00</b>	<b>0.036</b>	<b>3.5</b>

\* Diversion rate reduced by 20% to account for conveyance requirements within Hiawatha Canal

SUPPORT DATA  
IN FILE # 37-21811

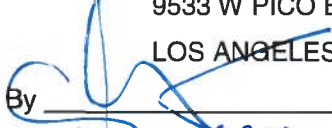
2. **COMPENSATION:** The Lessor shall accept and the Board shall pay compensation determined by the amount of water rented under the following rental rate during such times as the water is rented from the Bank over the term of this Lease.

**Minimum Payment Acceptable: Current Rental Rate**

3. **TERM OF LEASE:** The term of this lease shall be January 1, 2017 to December 31, 2021. 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.

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

**LESSOR:** WEST OF FIRST LLC  
9533 W PICO BLVD 2ND FLOOR  
LOS ANGELES, CA 90035

By   
Title MANAGER  
Date 8/30/2017

**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 9/5/2017

Lease approved by IDWR 

Date 9-5-2017

**ATTACHMENT A  
WATER SUPPLY BANK CONDITIONS OF ACCEPTANCE  
FOR LEASE CONTRACT NO. 665**

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

**Source and Location of Point(s) of Diversion for Water Right No(s): 37-21811, 37-21813, 37-21815, 37-21817**

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

Water Right	Beneficial Use	Season of Use			Diversion Rate (CFS)	Volume (AF)
		From		To		
37-21811	IRRIGATION	04/15	to	10/31	0.250 cfs	101.5 AF
37-21813	IRRIGATION	04/15	to	10/31	0.250 cfs	101.5 AF
37-21815	IRRIGATION	04/15	to	10/31	0.490 cfs	101.5 AF
37-21817	IRRIGATION	04/15	to	10/31	0.310 cfs	101.5 AF
<b>Totals:</b>					1.300 cfs	101.5 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		
02N	18E	4					2.1				4.9	20.5			1.5					29.0

Total Acres: 29.0

**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.
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. Water diverted from Headgate #22 delivered through Hiawatha Canal.
13. Right Nos. 37-21811, 37-21813, 37-21815 and 37-21817 are limited to the irrigation of a combined total of 29.0 acres in a single irrigation season.
14. This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.
15. Use of water under these rights is regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 37.
16. Rental of these water rights must not contribute to an increase in overall consumptive water use within the Wood River Valley if an overall increase in regional consumptive water use cannot be authorized without causing impact or injury to prior appropriators.
17. A portion of these rights provide conveyance for other right holders in the shared delivery of water through the Hiawatha canal. To prevent injury to other water right holders, the watermaster shall deliver 20%, or 0.26 cfs of the leased portion of these rights into the Hiawatha Canal whether it is rented or not.

STATE OF IDAHO  
WATER RESOURCE BOARD

RECEIVED  
APR 28 2017  
DEPARTMENT OF  
WATER RESOURCES

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

Designated Applicant West of First, LLC Water Right No. 37-21811  
(Select one owner – see item 1A on the application) (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.

MIMUMUM REQUIREMENT CHECKLIST

All items must be checked as either *Attached (Yes)* or *Not Applicable (N/A)*

Yes

- Completed *Application to Sell or Lease a Water Right to the Water Supply Bank*.
- Application filing fee of \$250.00 per water right. If you are submitting more than one lease application and the water rights have an overlapping, common place of use, or a common diversion rate or volume, the total fee for all water rights is \$500.00. For places of use, multiple water rights must be used to irrigate the same lands in order to qualify for the joint filing fee. Individual filing fees are required for water rights that share a common permissible place of use but which cover separate acres within the permissible place of use.
- Confirmation this form has been printed **single sided**, per requirement of the Water Supply Bank.

Attachment N/A Yes

- 1A   Signatures and contact information for *all owners* of the water right to be leased or sold on this application.
- 1B   An Internal Revenue Service (IRS) Form W-9 for the Designated Applicant.
- 1C   *Notice of Change in Water Right Ownership* form (accessible from [www.idwr.idaho.gov](http://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](http://www.idwr.idaho.gov).
- 4A   Written consent from irrigation district or water delivery company.
- 4G   Evidence demonstrating the water right has not been forfeited pursuant to Section 42-222(2), Idaho Code.

Department Use Only

Fee Amount \$ 500 Received By: VC Date Received: 5/11/17 Receipt # C103537  
W-9 received? Yes  No  (Route W-9 to Fiscal) Name on W-9:

377

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 West of First, LLC

Mailing Address 9533 W. Pico, 2nd Fl. , Los Angeles, CA 90035

Street

City

State

Zip Code

Email Address \_\_\_\_\_

Phone Number \_\_\_\_\_

- The Designated Applicant is the sole owner of the water right being sold or leased to the Water Supply Bank.

OR

- The Designated Applicant is representing additional water right holders who have completed Attachment 1A.

- B. Has the Designated Applicant submitted an IRS Form W-9 to this Department within the last 2 years? Yes  No   
If no, complete the form and attach to this application (Attachment 1B).

- C. Are all applicants on this form listed in IDWR's records as the current owners of the water right? Yes  No   
If no, attach a *Notice of Change in Water Right Ownership* form along with the required documentation and fee (Attachment 1C).

- D. Is this application being completed by an authorized representative of the Designated Applicant? Yes  No   
If yes, representatives (includes employees of Designated Applicant companies) must complete this section and submit documentary proof of their authority to represent the Designated Applicant (Attachment 1D).

Name of Representative Fritz X. Haemmerle

Organization Haemmerle Law, PLLC

Professional Title Attorney

Email Address fxh@haemlaw.com

Mailing Address P.O. Box 1800, Hailey, ID 83333

Phone Number (208) 578-0520

- Send all correspondence for this application to the representative and not to the Designated Applicant.

OR

- Send original correspondence to the Designated Applicant and copies to the representative.

2. DESCRIPTION OF WATER RIGHT OFFERED TO THE BANK

- The full water right is being offered to the Bank.

OR

- A part of the water right is being offered to the Bank.

If a portion of the water right is being offered, **complete Attachment 2.**

3. MAP

Attach a map of the point(s) of diversion and place(s) of use proposed to be idled by this lease application. Make sure the idled place of use is outlined and annotated with legal land descriptions (Township, Range, Section and Quarter-Quarters) or with GPS coordinates. For irrigation purposes, mark the number of acres you desire to idle. If the water right proposed for lease is located within a permissible place of use (PPU) and portions of the PPU will continue to receive water from non-leased water rights, clearly outline on a map the acres within the PPU that will continue to be irrigated, as well as acres that will be idled during the lease term. Label the map **Attachment 3.**

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.  
Hiawatha Canal
- C. Describe any other water rights used for the same purpose at the same place of use as the water right being offered to the Bank. 37-21813, 37-21815 and 37-21817
- 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. Parts of the water right area are covered by municipal water rights from the City of Hailey
- 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. n/a This water right was originally put into the Water Bank within the time period of the partial decree where forfeiture was not at issue.
- 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. During the SRBA, there was a period of non-use; however, the right was placed into the water bank within the time period after the partial decree was entered where forfeiture is not at issue
- H. Is this water right involved in any other IDWR process, such as an application for transfer or a mitigation plan?  
If yes, describe. Yes  No   
1.3 acres of this water right is being split inot water right 37-23038

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: 2017 to 2021 (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

West of First, LLC  
Mark Caplow Manager  
Printed Name

4/25/17  
Date

  
Signature of Authorized Representative

Fritz X. Haemmerle  
Printed Name

4/26/17  
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			
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)
37-21811	irrigation	0.250	n/a	29
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
Total Amounts:		_____	_____	_____

2. Source of water no change tributary to no change

3. Point(s) of diversion:

Twp	Rge	Sec	Lot	¼	¼	¼	County

No. <b>W 30322</b>  Return to: SECRETARY OF STATE 700 WEST JEFFERSON PO BOX 83720 BOISE, ID 83720-0080	<b>Due no later than May 31, 2016</b> <b>Annual Report Form</b>  1. Mailing Address: Correct in this box if needed.  WEST OF FIRST, LLC MARK CAPLOW 9533 PICO BLVD LOS ANGELES CA 90035	<b>2. Registered Agent and Address (NO PO BOX)</b>  CAPITOL CORPORATE SERVICES INC 921 S ORCHARD ST STE G BOISE ID 83705
<b>NO FILING FEE IF RECEIVED BY DUE DATE</b>		<b>3. New Registered Agent Signature:*</b>
<b>4. Limited Liability Companies: Enter Names and Addresses of at least one Member or Manager.</b>		
Office Held MANAGER  MANAGER	Name MARK A CAPLOW E&E CAPLOW LIVING TRUST, DATED 4/22/1991	Street or PO Address 9533 W PICO BLVD 2ND FLOOR 9533 W PICO BLVD 2ND FLOOR
	City LOS ANGELES LOS ANGELES	State CA CA  Country USA USA  Postal Code 90035 90035
<b>5. Organized Under the Laws of:</b>		
ID <b>W 30322</b>	Signature: L Jolon Name (type or print): L Jolon  Date: 04/11/2016 Title: Controller	
Processed 04/11/2016		
* Electronically provided signatures are accepted as original signatures.		



The USDA-FSA Aerial Photography Field office asks to be credited in derived products.

POU of water rights 37-21811, 37-21813, 37-21815, and 37-21817 after transfer of 1.3 acres





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

September 5, 2017

WEST OF FIRST LLC  
9533 W PICO BLVD 2<sup>ND</sup> FLOOR  
LOS ANGELES CA 90035

**RE: WATER SUPPLY BANK LEASE CONTRACT FOR WATER RIGHTS 37-21811, 37-21813, 37-21815, and 37-21817**

Dear Lessor:

Water rights **37-21811, 37-21813, 37-21815, and 37-21817** were leased into the Water Supply Bank (Bank) as of May 11, 2017, in accordance with the enclosed executed lease contract. **Your water rights, as described on the lease contract, are considered leased into the Bank and should remain unused until they are formally released from the Bank.** More information and further restrictions placed on your water rights while leased can be found in conditions of acceptance of the lease contract. Read the conditions of acceptance carefully.

The rights will automatically be released from the Bank on **December 31, 2021**, 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](http://www.idwr.idaho.gov). **Please note your water rights may not be available for immediate release if they have been rented or are being considered for a future rental. Furthermore, it is at the discretion of the Department whether or not a water right can be released early from a lease contract.**

If you have questions regarding this matter, please contact this office at 287-4800.

Sincerely,

*GS* Water Supply Bank

Enclosure: Executed Lease Contract

c: Corey Skinner - IDWR Southern Region  
Kevin Lakey - Water District 37  
Fritz Haemmerle - Haemmerle Law  
Hiawatha Canal Co



REAL ESTATE ■ INVESTMENTS ■ MANAGEMENT

RECEIVED

SEP 01 2017

DEPARTMENT OF  
WATER RESOURCES

August 30, 2017

Water Supply Bank  
IDWR  
322 East Front Street  
Boise, ID 83720-0098

FedEx Airbill No.: 8085 3809 9484

Re: Applications to Leave Water Rights 37-21811, 37-21813, 37-21815, and 37-21817 to the Water Supply Bank

Dear Sir/Madam:

Per your letter of August 24, 2017 (copy enclosed herein), attached are the two signed original Water Supply Bank Lease Contracts.

We look forward to receiving a fully executed copy.

Thank you.

West of First, LLC  
By: E.M. Caplow & Associates, Inc .

By:  Yanina Zejman, Property Management

Enc (as stated)

cc: Fritz Haemmerle, Esq.



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

August 24, 2017

WEST OF FIRST LLC  
9533 W PICO BLVD 2<sup>ND</sup> FLOOR  
LOS ANGELES CA 90035

**RE: APPLICATIONS TO LEASE WATER RIGHTS 37-21811, 37-21813, 37-21815, and 37-21817  
TO THE WATER SUPPLY BANK**

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

Dear Applicant:

The Department of Water Resources has completed its review of your applications to lease the above-mentioned water rights 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 rights will automatically be released from the Bank on **December 31, 2021**, unless the rights are released earlier by the Board, or upon your request. To release the 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. 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 rights may not be available for immediate release if they have 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 287-4800.

Sincerely,

Water Supply Bank

Enclosures: Proposed Lease Contracts  
Receipt # C103537

c: Fritz Haemmerle – Haemmerle Law PLLC

**Memorandum**

**To:** Water Rights 37-21817, 37-21815, 37-21813 and 37-21811

**From:** Remington Buyer

**Date:** August 22, 2017

**Re:** Water Supply Bank Lease Application 377

**Purpose/Narrative:** On May 11, 2017, the Department received payment to process new Water Supply Bank lease applications for the above listed irrigation water rights. The four rights as fully leased to the Bank for the period of 2016-2020, protected from forfeiture 30.3 acres worth of irrigation. New lease applications were submitted in association with an application for transfer (Transfer No. 81579), which sought an unencumbered transfer of title and access to 4.3% (1.3 acres) of the above rights, to move them to a new location. This memo evaluates a new lease of the remaining 29.0 acres irrigation, post-Transfer 81579.

It is helpful to note the pedigree of water rights associated with 37-21811, 37-21813, 37-21815 and 37-21817. The SRBA Court decreed in 2011 that these four rights authorize irrigation of 89.9 acres within Township 02N, Range 02E, Section 04, through diversion of Big Wood River water into the Hiawatha Canal, and therefrom delivery via Hiawatha laterals. The water right elements were decreed as follows:

Water Rights	Div. Rate	Acres	Rate/AC	Title Holder
<b>Water Rights, as decreed in 2011</b>				
37-21811, 37-21813, 37-21815, 37-21817	3.99 cfs	89.90 ac	0.04 cfs/ac	EMB Hailey LP

In the time leading up the 2011 SRBA decree, Blaine County and the City of Hailey permitted the phased development of the Northridge Subdivision within and along the boundaries of the place of use for water rights 37-21811, 37-21813, 37-21815 and 37-21817. As subdivision lots were sold off to new owners, title to portions of the above four water rights were also split and transferred to various parties, as follows:

Water Rights	Div. Rate	Acres	Rate/AC	Title Holder
<b>Water rights, as of Aug 22, 2017, following various ownership changes and splits*</b>				
37-22970, 37-22971, 37-22972, 37-22973	0.520 cfs	11.50 ac	0.05 cfs/ac	Northridge V Subdivision Owner's Association
37-22677, 37-22678, 37-22679, 37-22680	0.010 cfs	0.30 ac	0.03 cfs/ac	Ohanna Van Griensven & Russell Warburton Sample Trusts
37-22910, 37-22911, 37-22912, 37-22913	0.020 cfs	0.50 ac	0.04 cfs/ac	Emosa Hailey LP
37-22890, 37-22892, 37-22894, 37-22896	0.110 cfs	2.50 ac	0.04 cfs/ac	West of First LLC
*37-22773, 37-22774, 37-22775, 37-22776	1.010 cfs	22.80 ac	0.04 cfs/ac	City of Hailey
37-22891, 37-22893, 37-22895, 37-22897	0.660 cfs	14.8 ac	0.04 cfs/ac	Hailey II LLC
37-22810, 37-22811, 37-22812, 37-22813	0.310 cfs	7.20 ac	0.04 cfs/ac	Northridge II Subdivision Owner's Association
**37-21811, 37-21813, 37-21815, 37-21817	1.300 cfs	29.00 ac	0.04 cfs/ac	West of First LLC
***37-23038, 37-23039, 37-23040, 37-23041	0.050 cfs	1.30 ac	0.04 cfs/ac	West of First LLC
	3.990 cfs	89.90 ac	0.04 cfs/ac	

**Table 1 – Water Right Element Analysis**

**\* Diversion rate and acres includes 0.390 cfs and 8.7 acres (0.05 cfs/ac) that are presently being dedicated for mitigation for new City of Hailey permits 37-22825 and 37-22831.**

**\*\*Diversion rate no longer includes 1.3 acres and corresponding diversion rate that were transferred via Transfer 81579.**

**\*\*\*Water rights created through split via Transfer 81579.**

The place of use to which water rights 37-21811, 37-21813, 37-21815 and 37-21817 were (and remain still) appurtenant is no longer a field, but is instead a residential subdivision (served with municipal water rights).

**Authority to File:** The lease applications have been submitted by West of First LLC, which is the currently listed title holder to these water rights per IDWR records. In 2011, the water rights were decreed in the name of EMB Hailey LLC, however West of First has filed ownership change documentation with IDWR to assert that it acquired the above rights through a 2016 quit claim. No concerns about authority to file. Applications were submitted with assistance by a representative: Fritz Haemmerle of Haemmerle Law PLLC.

**Water Right Validity/Forfeiture Evaluation:** These water rights were decreed in 2011 and less than five years of non-use elapsed prior to the water rights being brought into the Bank during 2016. Forfeiture is not a concern.

**Injury Evaluation/Rentability:** No injury is evident through the lease of these water rights alone and it is possible that these water rights can be rented without causing injury. However, it is also possible that the rental of these water rights might result in a net increase in consumptive water use within the Wood River Valley, which might reduce water flows to senior water users downstream of the Wood River Valley, thereby causing potential injury.

The injury potential emanates from the possibility that overall real regional consumptive water use might increase through a lease and rental of these water rights. Understanding the injury scenario requires a consideration of both authorized and historic water uses at the place of use for these water rights. Water rights 37-21811, 37-21813, 37-21815 and 37-21817 authorize irrigation of up to 29 acres within what was previously an 89.9 acre place of use (see Table 1 above), now known as the Northridge Subdivision. Prior to the residential subdivision, the place of use was a field serviced with irrigation water from the Hiawatha Canal. The place of use is now also covered by City of Hailey municipal water rights.

If these Hiawatha Canal water rights are leased into the Bank and real consumptive irrigation water use at the place of use remains unchanged, then no net overall change will occur in real regional consumptive water use; instead, decreased consumptive irrigation water use under the Hiawatha Canal water rights would be offset through increased consumptive municipal water use under the City of Hailey's water rights. This rebalancing of consumptive water use from Hiawatha Canal to City of Hailey water rights might not constitute an enlargement in water use provided that the two water right portfolios are separate and distinct (i.e. not stacked together).

Though injury would not occur if real, regional overall consumptive water use remains unchanged via an increase in consumptive municipal water use (under City of Hailey water rights) while these four Hiawatha Canal water rights are leased into the Bank, if consumptive municipal water use increases through the lease of these Hiawatha Canal water rights AND the Hiawatha Canal water rights are rented for new or

supplemental consumptive irrigation water uses, injury is possible if the real, regional, overall consumptive use of water increases and regional water flows are reduced to downstream senior appropriators.

Avoiding injury through a rental of these water rights therefore requires that their future use (via a rental) does not result in a net increase in overall regional consumptive water use within the Wood River Valley at a time when regional water rights are fully appropriated and system flows are necessary to satisfy downstream senior water users. To avoid injury, it is advisable that the lease of these water rights include a condition with language to the effect of: *“rental of these water rights must not contribute to an increase in overall consumptive water use within the Wood River Valley if an overall increase in regional consumptive water use cannot be authorized without causing impact or injury to prior appropriators.”*

Alternatively, a simpler condition might be to restrict to the rental of these water rights for irrigation uses to properties that are serviced by both Hiawatha Canal and City of Hailey municipal water sources, which is consistent with the current arrangement of Hiawatha irrigation water rights and City of Hailey municipal water rights existent at the place of use proposed for lease under these water rights.

**Enlargement of Use/Rentability:** It is unclear when irrigation of the acres within the authorized place of use was last accomplished using Hiawatha Canal water. In the time leading up to the 2011 decree, the place of use for the water rights was platted and subdivided for phased development of residential homes within the Northridge Subdivision. Blaine County Assessor Office data indicate that residential homes were built on subdivided lands within and adjacent to the irrigation place of use as long ago as 1984.

Municipal water has likely been furnished to all parcels where homes have been constructed within the subdivision and municipal water may have also been applied to parcels where no homes are presently built. If City of Hailey municipal water rights have been used to irrigate subdivision parcels within and along the place of use boundaries for these Hiawatha Canal water rights, then these various water rights may have become stacked together and it could be posited that the unstacking of these separate water right portfolios (and subsequent irrigation use authorized under the different water right portfolios) would constitute an enlargement in water use. This concern was raised when sibling water rights 37-22810, 37-22811, 37-22812, and 37-22813 (belonging to Northridge II Subdivision Owner’s Association) were leased to the Bank in 2014. The current active lease contract for water rights 37-22810, 37-22811, 37-22812, and 37-22813 includes the following condition: *“because the place of use will continue receiving irrigation water from a municipality, this water right cannot be rented without causing enlargement.”*

Notwithstanding the above conditional text, it is alternatively possible that enlargement will not occur if these water rights are leased into the Bank and their authorized beneficial use of water (irrigation) does not cease, and instead continues under separate, City of Hailey municipal water rights. The basis for this position is that municipal water use is necessarily different than irrigation water use; municipal water use is intended to be multifaceted and flexible, fully consumptive, and can include (but is not limited to) irrigation purposes. Because municipal water rights are not equivalent to irrigation water rights, enlargement will not automatically occur if irrigation use ceases under irrigation water rights but continues under municipal water rights. This lease review does not find that the Hiawatha Canal and City of Hailey municipal water rights are necessarily stacked. However, a condition similar to the one above for water rights 37-22810, 37-22811, 37-22812, and 37-22813 will be proposed to acknowledge that future administrative review of these water rights may require re-evaluation of the potential for enlargement to occur if irrigation of the place of use continues under the City of Hailey’s municipal water rights portfolio.

Of final note: a GIS spatial analysis of the places of use for the various water right groups in Table 1 above reveals that a 1.4 ~ 2 acre overlap exists within the NESW and SESW quarter-quarters of the places of use shapes for water rights 37-21811, 37-21813, 37-21815, 37-21817 (belonging to West of First LLC), 37-22891, 37-22893, 37-22895, 37-22897 (belonging to Hailey II LLC) and 37-22773, 37-22774, 37-22775 and 37-22776 (belonging to City of Hailey). Additionally, approximately 3.5 acres in the SESW QQ are not presently spatially assigned to the POU shapes for any of the water rights in Table 1, even though these acres were covered in the original POU decreed in 2011. However, concerns about the accuracy of spatial place of use shapes are not equivalent to concerns about water use enlargement and this information is documented merely to assist in future POU reviews associated with these water rights.

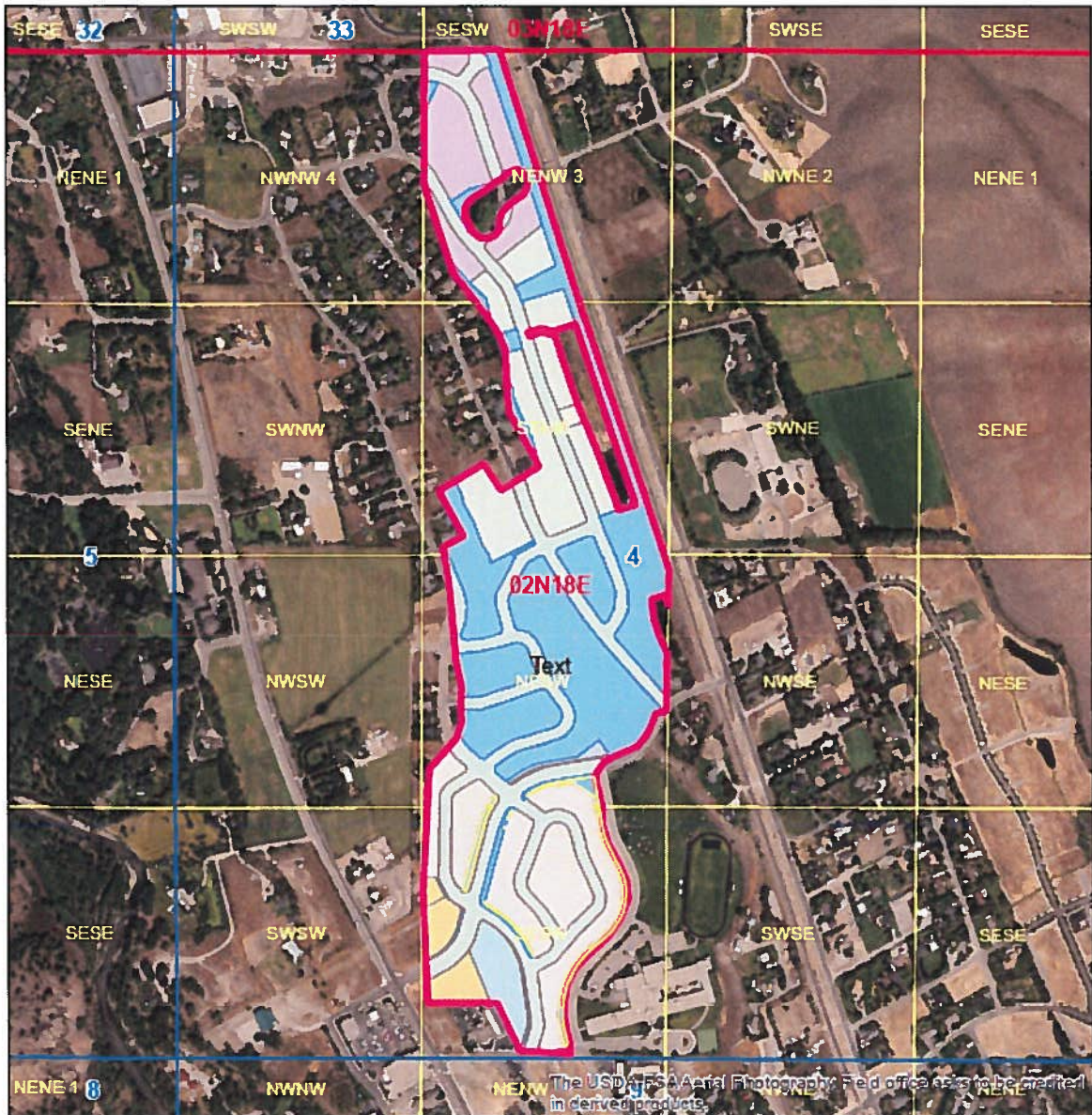
**Local Public Interest:** Staff have no information to suggest a lease of these water rights is contrary to local public interests. However, future review of any prospective rental of these water rights must ensure that their potential (rental) use does not induce an overall, net increase in overall, regional consumptive water use within the Wood River Valley at a time when water rights are fully allocated and system flows are necessary to contribute to downstream, senior water users.

**Beneficial Use/Conservation of Water Resources:** Irrigation is a recognized beneficial use. Historic irrigation practices are unclear and a standard regional headgate duty of water (3.5 afa/ac) is proposed for the volume of water associated with these water rights.











**Department/Watermaster Comments:** Comments on the lease will be sought from Water District 37 Watermaster Kevin Lakey, along with comments from IDWR Southern Region.

**Water Supply Bank Evaluation:** Though there are no concerns about leasing these water rights into the Bank.

# Water Rights 37-21817, 21815, 21813 and 21811 Analys



## Legend

	Overlapping Acres		WRs_37-22890_et_al
	OriginalPOU		WRs_37-22910_et_al
	WRs_37-21811_et_al		WRs_37-22677_et_al
	WRs_37-22810_et_al		WRs_37-22973_et_al
	WRs_37-22891_et_al		
	WRs_37-22773_et_al		



## Buyer, Remington

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**From:** Skinner, Corey  
**Sent:** Wednesday, August 16, 2017 8:36 AM  
**To:** Buyer, Remington  
**Subject:** RE: West of First Water Rights

No concerns from me.

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**From:** Buyer, Remington  
**Sent:** Tuesday, August 15, 2017 4:59 PM  
**To:** 'Kevin Lakey' <watermanager@cablone.net>; Skinner, Corey <Corey.Skinner@idwr.idaho.gov>  
**Cc:** Skaggs, Pam <Pam.Skaggs@idwr.idaho.gov>  
**Subject:** West of First Water Rights

Kevin, Corey,

Attached is my recent review of a WSB lease application for water rights 37-21817, 37-21815, 37-21813 and 37-21811, all belonging to West of First LLC. I don't foresee problems leasing the water rights into the Bank, however a rental of these rights should likely be scrutinized to ensure it doesn't result in increased consumptive uses of water if water is required to be delivered to senior downstream water users. (See my review memo for additional analysis.)

As always, please advise on any comments, questions or concerns you might have.

Thanks,

Remington  
287-4918