

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

WATER SUPPLY BANK RENTAL AGREEMENT NO. 126

This is to certify that:

BEHREND BEHREND KNITTEL
PO BOX 815
ABERDEEN, ID 83210

RECEIVED

MAR 16 2017

DEPARTMENT OF
WATER RESOURCES

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)
35-2553A	1/8/1959	GROUND WATER	0.74	152.4	38.1
35-2713	5/10/1962	GROUND WATER	0.74	174.4	43.6
35-14260	10/1/1953	GROUND WATER	0.39	88.0	22.0
35-14262	1/8/1959	GROUND WATER	0.07	14.0	3.5
35-14258	1/18/1974	GROUND WATER	0.41	159.6	39.9
		Combined Limit Totals	0.86	173.6	43.4
35-7169	3/9/1971	GROUND WATER	0.73	152.4	38.1
35-7373	1/18/1974	GROUND WATER	0.22	44.2	11.1
35-10422	7/31/1987	GROUND WATER	0.06	15.6	3.9
		Combined Limit Totals	0.78	412.4	53.1
Combined Rental Totals			3.12	712.8	178.2

Term of Rental: This rental shall take effect when all parties have signed it and shall continue in effect until December 31, 2019

Annual Rental Fee:

2017: \$12,117.60
2018: \$14,256.00
2019: \$14,256.00

The full fee for the rental of the above-described right(s) is \$12,117.60 for 2017 and \$14,256.00 per year for years 2018 - 2019. The rental fee includes an administrative fee of \$1,211.76 for 2017 and \$1,425.60 per year for years 2018 - 2019.

An annual payment shall be received by the Department on or before December 31 each year preceding the use of the rented water rights. The agreement will be void if payment is not received by the due date in a given year. Rental fees are non-refundable. To voluntarily terminate the agreement early, notify the Department in writing prior to the rental fee due date.

Detailed water right conditions are attached.

SUPPORT DATA

IN FILE # 35-2553A

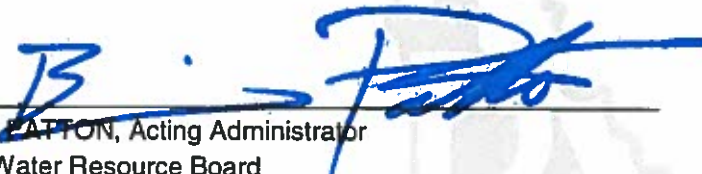
STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
WATER SUPPLY BANK RENTAL AGREEMENT NO. 126

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:

 3-13-17
Signature of Renter Date
Nic Behrend Partner
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  Date 3/17/2017
BRIAN PATTON, Acting Administrator
Idaho Water Resource Board

Rental approved by IDWR  Date 3-17-2017

WATER SUPPLY BANK RENTAL AGREEMENT NO. 126**WATER USE DETAILS****RECEIVED****MAR 16 2017****DEPARTMENT OF
WATER RESOURCES****LOCATION OF POINT(S) OF DIVERSION**

GROUND WATER

SWSE

Sec. 6, Twp 05S, Rge 31E,

BINGHAM County

Beneficial Use
IRRIGATION**Diversion Rate**
3.12 CFS**Volume**
712.8 AF**BENEFICIAL USE & SEASON OF USE**

Water Right No.	From	To	Diversion Rate
35-2553 A	4/1	11/1	0.74 CFS
35-2713	4/1	11/1	0.74 CFS
35-7169	4/1	10/31	0.73 CFS
35-7373	4/1	11/1	0.22 CFS
35-10422	4/1	10/31	0.06 CFS
35-14258	4/1	11/1	0.41 CFS
35-14260	4/1	10/31	0.39 CFS
35-14262	4/1	11/1	0.07 CFS

RENTERS PLACE OF USE: IRRIGATION

Twp	Rng	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
05S	31E	6									30.0	30.0	30.0	30.0					120.0
05S	31E	7					28.2	30.0											58.2

Total Acres: 178.2

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 for mitigation by non-use 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. This rental agreement does not authorize the construction of a well.

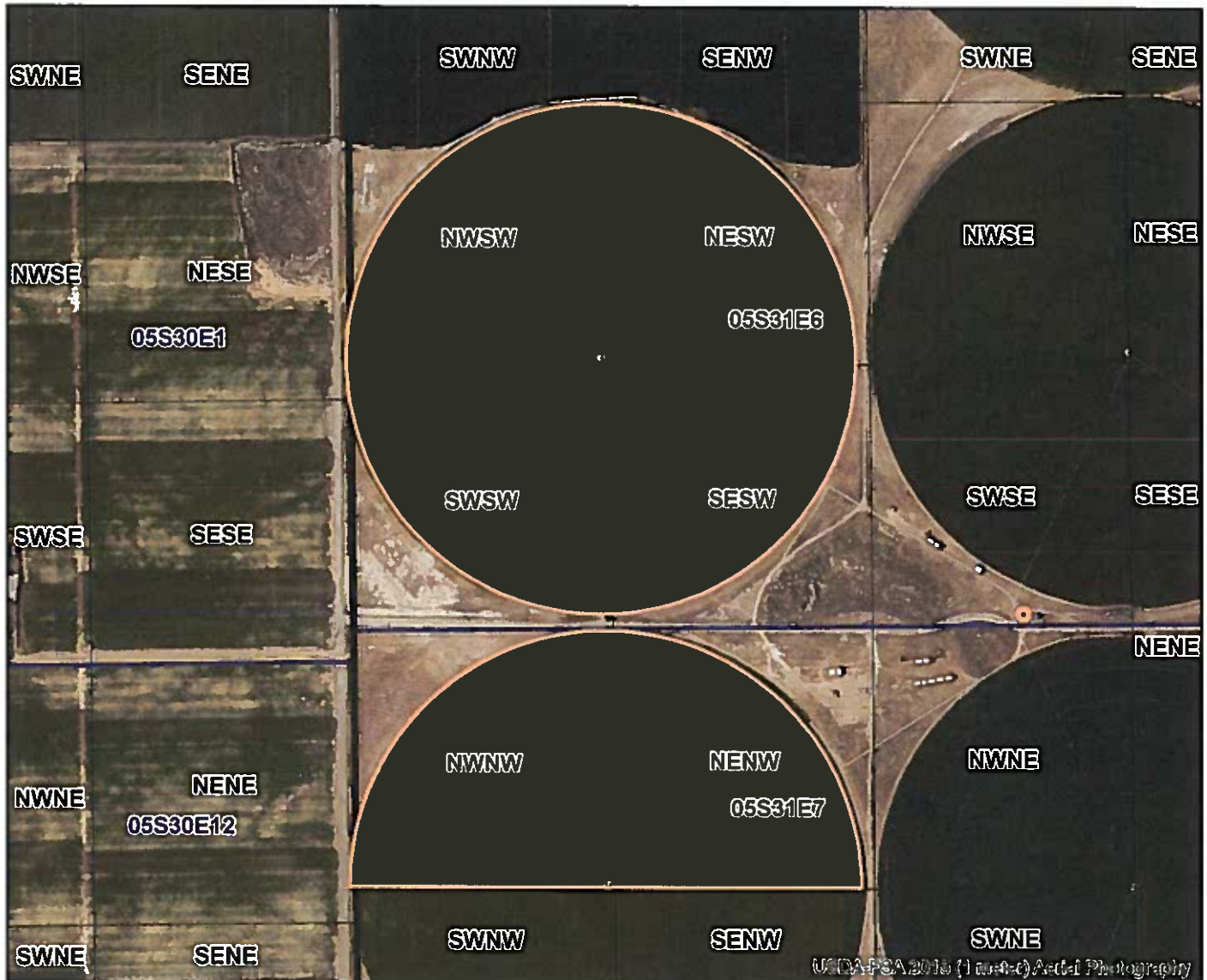
9. This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 4.0 afa per acre at the field headgate for irrigation of the place of use.
10. A lockable device subject to the approval of the Department shall be maintained on the diverting works in a manner that will provide the watermaster suitable control of the diversion.
11. Use of water under this right will be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 120.
12. Prior to the diversion and use of water the right holder shall install and maintain acceptable measuring device(s) at the authorized point(s) of diversion in accordance with Department specifications, or shall obtain an approved variance from the Department to determine the amount of water diverted from power records or to maintain an existing measuring device.



Idaho Water Resource Board
Water Supply Bank Rental Agreement

Effective until December 31, 2019

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



-  Authorized Rental Point of Diversion
-  Authorized Rental Place of Use
-  Townships
-  PLS Sections
-  Quarter Quarters
-  Taxlots



0 0.25 0.5 Miles

STATE OF IDAHO
WATER RESOURCE BOARD

Print Form

APPLICATION TO RENT WATER
FROM THE BOARD'S WATER SUPPLY BANK

RECEIVED

JAN 11 2017

Applicant Name: Behrend Behrend and Knittel FarmsIs this application being submitted with a lease application as a lease/rental package?
If yes, specify companion water rights in Section 4DEPARTMENT OF
WATER RESOURCES
Yes ☒ No ☐

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

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

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

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

MINIMUM REQUIREMENT CHECKLIST

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

Yes

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

Attachment N/A Yes

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

Department Use Only – Proposed Water Right(s)

**STATE OF IDAHO
WATER RESOURCE BOARD**

Application to Rent Water (Continued)

1. CONTACT INFORMATION

A. Applicant Bchrend Behrend and Knittel Farms
 Mailing Address PO Box 815 Aberdeen ID 83210
Street City State Zip Code
 Email Address nbehrend@gmail.com Phone Number 208-221-0342

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 _____
 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**:

These rights will be used for mitigation for the SWC - TQWA
negotiated agreement and will not be pumped.

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

Desired Rate (Cubic Feet/Second)	Desired Volume (Acre-Foot)	Minimum Rate* (Cubic Feet/Second)	Minimum Volume* (Acre-Foot)	Desired Acres (if applicable)
<u>3.12</u> CFS	<u>712.8</u> AF	CFS	AF	<u>178.2</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.

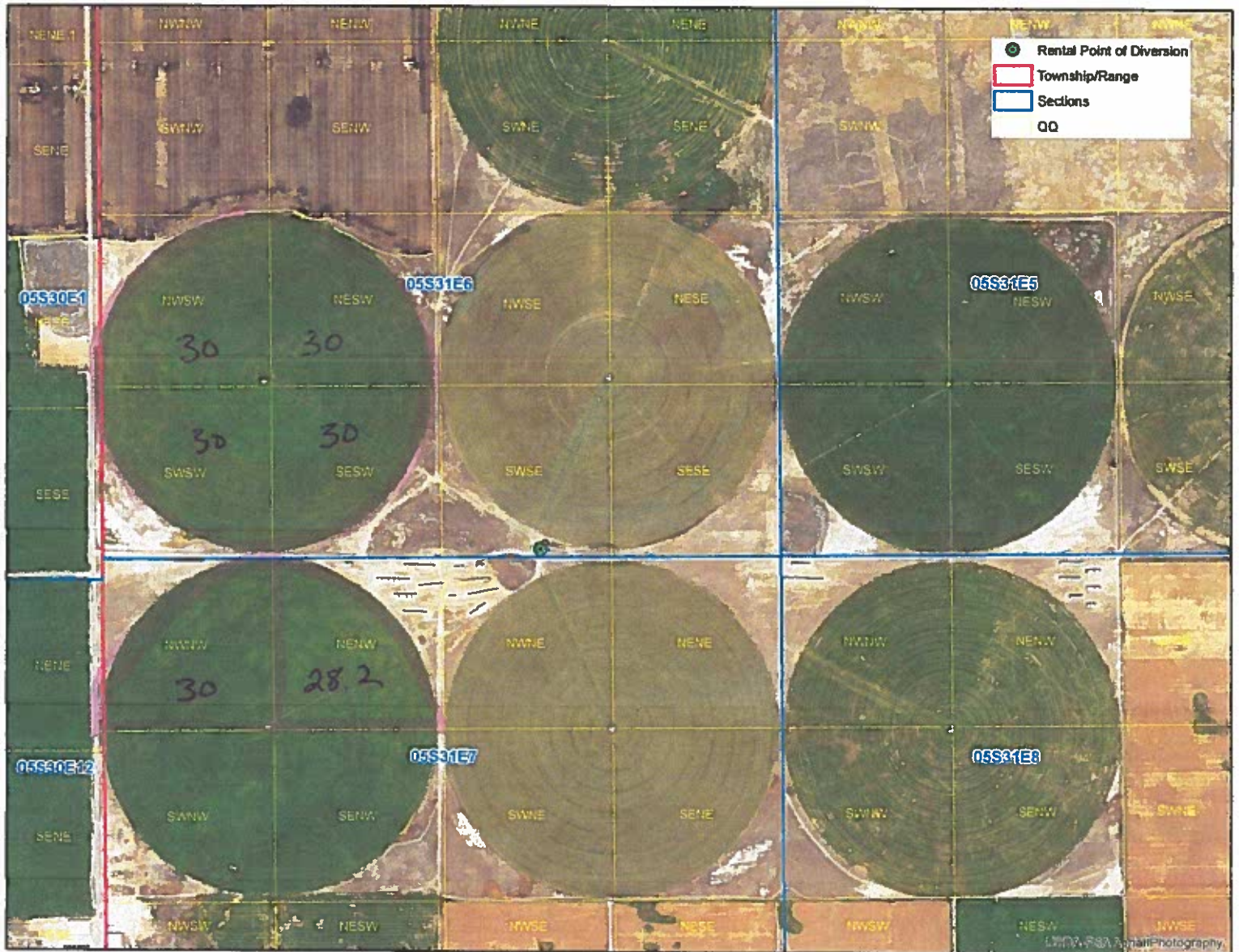
C. This section must be completed in full. Enter the proposed start date and latest possible start date for using rental water as well as the number of years you would like to rent water. The latest possible start is the latest possible date by which you would be willing to pay for a rental and be able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

Desired Start Date (month/day/year)	Latest Possible Start Date (month/day/year)	*Mark Desired Rental Duration (Calendar Years)					**Applicant's preference if rental application cannot be processed prior to the latest possible start?	
<u>4/1/17</u>	<u>4/30/17</u>	☐ 1	☐ 2	☐ 3	☐ 4	☒ 5	☒ Process application as soon as possible	☐ 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.

Attachment 2



5531 Sec 6

	<u>Acres</u>
NW 1/4	30
NE 1/4	30
SW 1/4	30
SE 1/4	30

05531E Sec 7

	<u>Acres</u>
NW 1/4	30
NE 1/4	28.2

**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):

Wells providing water to pivots through mainlines

- 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
WMIS 600251 pump	Ground Water	35-2553A, 2713, 14260, 14262
600252 pump	Ground Water	14258, 7169, 7373, 10422
600253 pump	Ground Water	

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 _____ (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: Mitigation from: 4/1/17 (mm/dd) to: 12/1/17 (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 (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)
35-2553 A	Irrigation	.74	152.4	38.1		.74	152.4	38.1
35-2713	Irrigation	.74	174.4	43.6		.74	174.4	43.6
35-14260	Irrigation	.39	88	43.4		.39	88	43.4
35-14262	Irrigation	.07	14	43.4		.07	14	43.4
35-14258	Irrigation	.40	159.6	43.4		.40	159.6	43.4
35-7169	Irrigation	.73	152.6	38.2		.73	152.6	38.2
35-7373	Irrigation	.22	44.2	11.1		.22	44.2	11.1
35-10422	Irrigation	.06	15.6	3.9		.06	15.6	3.9
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	3.12	712.8	178.2
						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**:

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

Yes ☐ No ☒

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

STATE OF IDAHO
WATER RESOURCE BOARD

Application to Rent Water (Continued)

5. ADDITIONAL INFORMATION

- A. Is this the first time that rental water is being requested for this purpose at the rental place of use? Yes ☐ No ☒

If no, list previous rental requests/agreements and explain why you have not secured a permanent water right for your needs:

rented same water last year. The owner of the rights requests we use this farmet to pick up the water they put into the bank to use for mitigation.

- 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:

Yes ☐ No ☒

- 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.

- D. Additional Information

These rights submitted by Simplot should have been earmarked to be rented by Behrend Behrend and Knittel farms.

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

Nic Behrend

Printed Name of Applicant

1-8-17

Date

Signature of Representative

Printed Name of Representative

Date

Print Form

Mail to:

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



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

C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

March 20, 2017

BEHREND BEHREND KNITTEL
PO BOX 815
ABERDEEN ID 83210

**RE: RENTAL OF WATER FROM THE WATER SUPPLY BANK
WATER RIGHT NOS. 35-2553A, 35-2713, 35-7169, 35-7373, 35-10422, 35-14258,
35-14260, and 35-14262**

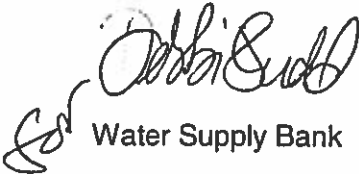
Dear Renter:

Please find enclosed a receipt in the amount of **\$12,117.60** and a copy of a fully executed Water Supply Bank Rental Agreement in connection with the rental of 712.8 acre-feet of water for irrigation of 178.2 acres 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, 90% or \$10,905.84 of the rental fee will be paid to the lessor(s) and 10% or \$1,211.76 will be retained by the Department to offset administrative costs.

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

Sincerely,



Water Supply Bank

Enclosures: Receipt No. C103196
Rental Agreement (copy)

c: Sascha Marston – Fiscal
James Cefalo – IDWR Eastern Regional Office/Water District # 120
Watermaster Name – State Water District No. XXX



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

C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

March 8, 2017

BEHREND BEHREND KNITTEL
PO BOX 815
ABERDEEN ID 83210

**RE: APPLICATION TO RENT WATER FROM THE WATER SUPPLY BANK
WATER RIGHT NOS. 35-2553A, 35-2713, 35-7169, 35-7373, 35-10422,
35-14258, 35-14260, and 35-14262**

*****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 \$12,117.60 was calculated based on the current rental rate of \$17.00 per acre-foot times a diversion volume of 712.8 acre-feet. 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 \$12,117.60 made payable to the Idaho Department of Water Resources, together with the signed rental agreement, within 14 days so I can complete processing. Pursuant to the Water Supply Bank Rules, 90% or \$10,905.84 of the rental fee will be paid to the lessor(s) and 10% or \$1,211.76 will be retained by the Department to offset administrative costs.

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 Right No.: 35-2553A, 35-2713, 35-7169, 35-7373, 35-10422, 35-14258, 35-14260 and 35-14262

From: Sandra Thiel

Date: February 28, 2017

Re: Review of Application to Rent Water Rights from the State Water Supply Bank

PURPOSE/NARRATIVE: On January 11, 2017, Nic Behrend of Behrend Behrend and Knittel (BBK) submitted a rental application for 178.2 acres, 3.12 cfs and 712.8 af. The documents accompanied a lease application from Simplot to lease acres at the same place of use into the Bank. BBK has an agreement with the JR Simplot Company to lease the land at the rental place of use through October 1, 2021. They are also renting a portion of the water that is appurtenant to that place of use and will divert water from one of the existing wells. The leased rights are in the Bank through 2019. The rental will be for three years.

This is the same lease/rental package the 2016 season. Initially there was a misunderstanding about the beneficial use of the water, whether they intended it for mitigation or irrigation. However, they do intend to irrigate.

PURPOSE/NARRATIVE: On November 17, 2015, Nic Behrend of Behrend Behrend and Knittel (BBK) submitted a rental application for 178.2 acres, 2.66 cfs and 356.4 af. The documents accompanied a lease application from Simplot to lease acres at the same place of use into the Bank. On January 25, 2016, Nic Behrend confirmed they plan to irrigate (see attached email). BBK has an agreement with the JR Simplot Company to lease the land at the rental place of use. They are also renting a portion of the water that is appurtenant to that place of use and will divert water from one of the existing wells.

AUTHORITY TO FILE: The Secretary of State lists Nicholas Behrend as the registered agent for BBK.

WATER RIGHT VALIDITY: 35-2553A: Simplot leased 38.1 acres primarily of pivot corners. This right has been in the bank since 2014 and a review of the 2015 imagery shows the leased place of use idled through the season. The lease for 35-2713 includes 43.6 out of 287 acres. This right has also been in the bank since 2014 and a review of the 2015 imagery shows the leased place of use idled through the season.

Rights 35-7169, 35-7373, and 35-10422 irrigate the same place of use. Of the rights, 53.1 acres (primarily pivot corners) have been idled and leased into the bank since 2009. A review of the 2015 imagery shows the leased place of use idled through the season.

The lease for overlapping rights 35-14258, 35-14260, and 35-14262 includes 43.4 acres and 0.40 cfs. As with the above rights the lease portion primarily covers pivot corners. Simplot has leased portions of these rights into the bank since 2009. A review of the 2015 imagery shows the leased place of use idled through the season.

INJURY TO OTHER WATER RIGHTS: No injury is apparent.

ENLARGEMENT OF USE: No enlargement is evident through the lease alone. Right 35-4189 shares the place of use and authorizes irrigation through the application of spent processing water. However, according the application, the place of use will not receive water from any other source. The point of diversion and place of use are essentially the same for the rental as for lease. There will be no change in rate per acre or volume per acre.

LOCAL PUBLIC INTEREST: Review staff has no information to suggest this application is inconsistent with the local public interest.

Agreement # 126

BENEFICIAL USE/CONSERVATION OF WATER RESOURCES: The leases appear consistent with the conservation of water resources in Idaho.

DEPARTMENT STAFF OR WATERMASTER COMMENTS: The right is subject to Water District 120. James Cefalo had no concerns.

Thiel, Sandra

From: Cefalo, James
Sent: Tuesday, February 28, 2017 12:04 PM
To: Thiel, Sandra
Subject: RE: Behrend Behrend and Knittle Farms rental

Sandra,

It appears everything is in order. I don't have any concerns with the proposed WSB Rental.

James

From: Thiel, Sandra
Sent: Tuesday, February 28, 2017 10:30 AM
To: Cefalo, James <James.Cefalo@idwr.idaho.gov>
Subject: Behrend Behrend and Knittle Farms rental

Hello, The attached documents describe a rental for Behrend Behrend and Knittle Farms. This is the same rental of Simplot rights as they had for the 2016 season. Please let me know if you have any questions or concerns.

Sandra Beer Thiel
Idaho Department of Water Resources
322 East Front Street
Boise, Idaho 83720-0098
(208)287-4881
sandra.thiel@idwr.idaho.gov

From: [Nic Behrend](#)
To: [Buyer, Remington](#)
Subject: Re: Rental Application Number 620
Date: Thursday, February 02, 2017 10:25:46 AM

Remington,

As per our phone conversation on the morning of Feb 2nd, We are going to reduce our usage as required in the settlement agreement on the Simplot properties. The water we rent from the pool will be used to supplement those reduced rights to bring the allowable amount pumped back up to near the historical usage amount. Hopefully this helps clarify the situation.

Nic

Sent from my iPad

On Feb 1, 2017, at 12:33 PM, Buyer, Remington <Remington.Buyer@idwr.idaho.gov> wrote:

Nic,

I received the PDF you submitted outlining 2016 reduction targets for ground water users within the AFAGWD. However, it is still unclear to me as to what the mitigation by non-use rental is seeking to accomplish.

I see that the Simplot rights that you are seeking to rent are included on that AFAGWD reduction list. There is a reduced annual diversion volume prescribed for the Simplot rights. Is the purpose of your rental to make up the difference between what the Simplot rights allow (by license/deed) for annual diversions versus what annual diversion volumes are prescribed to be by the AFAGWD? If so, and you intend to continue agricultural production on those acres, the purpose of your rental would be for supplemental irrigation.

However, if you do not intend to irrigate those acres at all, and you want to use those rights for "mitigation by non-use" for what use are you mitigating? Is your mitigation rental intended to offset the prescribed reduction (by AFAGWD) of some of your other water rights (ie, so that you can divert full licensed/deed volumes on those acres)? Or is the rental aiming to leave the water rights in the ground, undiverted, without offsetting water uses elsewhere? If it is the latter, why is BBK undertaking this rental, instead of it coming directly from American Falls-Aberdeen ground water district?

Please call me when you are free to discuss, thanks,

Remington
287-4918

Thiel, Sandra

From: Nic Behrend <nbehrend@gmail.com>
Sent: Friday, February 24, 2017 9:35 AM
To: Thiel, Sandra
Subject: Re: water supply bank rental

Sandra, Thanks for your follow up on this. I spoke with Remington on these rights and the best way to answer the question that you asked because it can be looked at two ways. The water we are leasing is to be used as mitigation and can be done so in one of two ways. It can be not pumped and by not pumping it will offset the required reduction on the other simplot fields. Or, we could reduce pumping on those other simplot fields and then use the leased water to supplement the reduction. This is the same thing that we did with them last year. I will forward you the last email between Remington and myself to hopefully clarify how to move forward.

Sent from my iPad

On Feb 23, 2017, at 1:50 PM, Thiel, Sandra <Sandra.Thiel@idwr.idaho.gov> wrote:

Hello, I am reviewing your application to rent water from the Bank. On question 3, description of proposed use for rental water you replied: *These rights will be used for mitigation for the SWC-IGWA negotiated agreement and will not be pumped.* As I understand this, portions of the 8 rights you identified are leased into the bank and will not be diverted; they will be used as mitigation. I believe last year you irrigated with the rented water. Will any of the rented water be used to irrigate this year?

Sandra Beer Thiel
Idaho Department of Water Resources
322 East Front Street
Boise, Idaho 83720-0098
(208)287-4881
sandra.thiel@idwr.idaho.gov

American Falls-Aberdeen Ground Water District

2016 Reduction Sheet

BEHREND FARMS INC

WR Owner	Pam Contact	Water Right #	Priority Date	Condition	CFS	COMBINED ACRES	Tier	Acres/Right	Allowed Acre-Ft	WMIS Number	5 YR Avg Usage (AF)	ft/acre
NICHOLAS P BEHREND	BBK Farms Inc	35-13571	4/20/1955		0.56	129	1	45.0	99.0	600218	642.4	1.67
KRISTIN R BEHREND	BBK Farms Inc	35-13598	4/1/1979		0.11		3	7.3	12.4			
GREGORY W KNITTEL	BBK Farms Inc	35-13626	8/5/1976		1.28		2	76.7	145.7			
JENNECCA S KNITTEL	BBK Farms Inc	35-7837B	1/22/1979	TRUST	2	100	3	100.0	170.0			
JENNECCA S KNITTEL	BBK Farms Inc	35-13570	4/20/1955		1.94	155	1	155.0	341.0			
NICHOLAS P BEHREND	BBK Farms Inc	35-13625	8/5/1976		1.96	116.9	2	116.9	222.1	600177	158.0	1.23
DEBRA J BEHREND	BBK Farms Inc	35-13596	4/1/1979		0.17	11.1	3	11.1	18.9			
NICHOLAS P BEHREND	BBK Farms Inc	35-13758	2/24/1979		1.12	56	3	56.0	95.2	600183	554.6	1.68
NICHOLAS P BEHREND	BBK Farms Inc	35-13764	2/24/1981		0.18	11.9	3	11.9	20.2			
PAUL W BEHREND	BBK Farms Inc	35-13763	2/24/1981	TRUST	2.42	164	3	164.0	278.8			
NICHOLAS P BEHREND	BBK Farms Inc	35-7954F	2/24/1981	TRUST	1.03	98.1	3	98.1	166.8			
NICHOLAS P BEHREND	BBK Farms Inc	35-7954E	2/24/1981	TRUST	4.98	471	3	471.0	800.7	600181	664.1	1.41
PAUL W BEHREND	BBK Farms Inc	35-8597	9/13/1985	COMBINED	0.24	14.5	3	14.5	24.7	600507	366.4	2.42
PAUL W BEHREND	BBK Farms Inc	35-2712	4/27/1962	COMBINED	2.28	137	2	137.0	260.3			
PAUL W BEHREND	BBK Farms Inc	35-7954A	2/24/1981	TRUST	1.35	116	3	116.0	197.2	600215	649.2	1.68
PAUL W BEHREND	BBK Farms Inc	35-7873	9/21/1979	TRUST	1.44	124.5	3	124.5	211.7			
PAUL W BEHREND	BBK Farms Inc	35-7877	9/21/1979	TRUST	1.71	147	3	147.0	249.9			
PAUL W BEHREND	BBK Farms Inc	35-7954B	2/24/1981	TRUST	5.1	508	3	508.0	863.6	600182	701.3	1.38
GREGORY W KNITTEL	BBK Farms Inc	35-13600	8/5/1976		1.14	256	2	68.4	130.0	600853	468.0	1.83
PAUL W BEHREND	BBK Farms Inc	35-13757	2/24/1979		3.61		3	181.0	307.7			
NICHOLAS P BEHREND	BBK Farms Inc	35-13597	4/1/1979	ENLARGEMENT	0.1		3	6.6	11.2			
JENNECCA S KNITTEL	BBK Farms Inc	35-7834	6/19/1980	TRUST	4.49	309	3	309.0	525.3	600176	399.1	1.29
BEHREND FARMS INC	BBK Farms Inc	35-7516	6/23/1975		1.22	308	2	70.3	133.6	600372	618.4	2.01

American Falls-Aberdeen Ground Water District

2016 Reduction Sheet

BEHREND FARMS INC	BBK Farms Inc	35-2738	5/7/1964	4.125	2	237.7	451.6	
BEHREND FARMS INC	BBK Farms Inc	35-2116	12/1/1948	2.8	1	140.0	308.0	600502 326.3 2.33
BEHREND FARMS INC	BBK Farms Inc	35-2769	3/22/1965	4.44	2	312.0	592.8	600401 557.4 1.79
J R SIMPLOT CO	J R Simplot	35-7373	1/18/1974	1.82	3	91.0	154.7	600251 172.9 2.37
J R SIMPLOT CO	J R Simplot	35-7169	3/9/1971	6	2	314.0	596.6	600252 1013.2
J R SIMPLOT CO	J R Simplot	35-10422	7/31/1987	0.47	3	32.0	54.4	600253 1087.5
J R SIMPLOT CO	J R Simplot	35-2553A	1/8/1959	3.08	1	158.0	347.6	600254 398.5
J R SIMPLOT CO	J R Simplot	35-14258	1/18/1974	3.36	2	168.2	319.6	600257 271.1
J R SIMPLOT CO	J R Simplot	35-14260	10/1/1953	3.25	1	162.7	358.0	
J R SIMPLOT CO	J R Simplot	35-14262	1/8/1959	0.56	1	28.0	61.7	
J R SIMPLOT CO	J R Simplot	35-2713	5/10/1962	4.9	2	287.0	545.3	
J R SIMPLOT CO	J R Simplot	35-13971	12/12/1975	6.45	2	298.5	567.2	600186 776.0 2.41
J R SIMPLOT CO	J R Simplot	35-13973	10/31/1986	0.52	3	24.1	40.9	
J R SIMPLOT CO	J R Simplot	35-7034	8/14/1968	3.72	2	186.0	353.4	600184 734.2 2.32
J R SIMPLOT CO	J R Simplot	35-8726	4/28/1989	2.6	3	130.0	221.0	
		Totals:				5,564.6	10,258.8	10,558.5

2016	2016
Reduction	Allowed
Acre-Ft	Acre-Ft
-527.9	10,030.6
*5% calculated reduction	

Total WR	Total 5 yr	Allowed AF	Overall
Acres	Avg AF	by Tiers	ft/Acre
5,564.6	10,558.5	10,258.8	1.9