

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

WATER SUPPLY BANK RENTAL AGREEMENT NO. 14

RECEIVED

JAN 09 2017

DEPARTMENT OF
WATER RESOURCES

This is to certify that:

LEE H SUTTON
1577 E 10000 S
REXBURG, ID 83440

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

Summary of Water Rights or Portions Rented from the Bank

Water Right No.	Priority Date	Source	Diversion Rate (CFS)	Diversion Volume (AF)	Acres (AC)	Rate Per Acre (CFS/AC)	Volume Per Acre (AF/AC)
22-7336	10/22/1980	GROUND WATER	1.24	217.5	62.1	0.02	3.5
		Rental Totals	*1.24	217.5	62.1	0.02	3.5

*Actual annual rental diversion is limited to 0.92 cfs and 161.0 af for irrigation of 46.0 acres

Term of Rental: This rental shall take effect when all parties have signed it and shall continue in effect until December 31, 2020

Annual Rental Fee:

2017:	\$3,697.50
2018:	\$4,350.00
2019:	\$4,350.00
2020:	\$4,350.00

The full fee for the rental of the above-described right(s) is \$3,697.50 for 2017 and \$4,350.00 per year for years 2018 - 2021. The rental fee includes an administrative fee of \$369.75 for 2017 and \$435.00 per year for years 2018 - 2021.

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.

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
WATER SUPPLY BANK RENTAL AGREEMENT NO. 14

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:

Lee H Sutton 1-4-17
Signature of Renter Date

Lee H Sutton Individual
Printed Name Title

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

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

By Brian Patton 1/10/2017
BRIAN PATTON, Acting Administrator Date
Idaho Water Resource Board

Rental approved by IDWR Chad 1-10-2017
Date

WATER SUPPLY BANK RENTAL AGREEMENT NO. 14

WATER USE DETAILS

LOCATION OF POINT(S) OF DIVERSION

GROUND WATER SESW Sec. 2, Twp 04n, Rge 40e, MADISON County

Beneficial Use Diversion Rate Volume
IRRIGATION 1.24 CFS 217.50 AF

BENEFICIAL USE & SEASON OF USE

Water Right No. From To Diversion Rate
22-7336 4/1 10/31 1.24 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	
04N	40E	3	32.0 L1	9.5 L2	0.5	4.0													46.0

Total Acres: 46.0

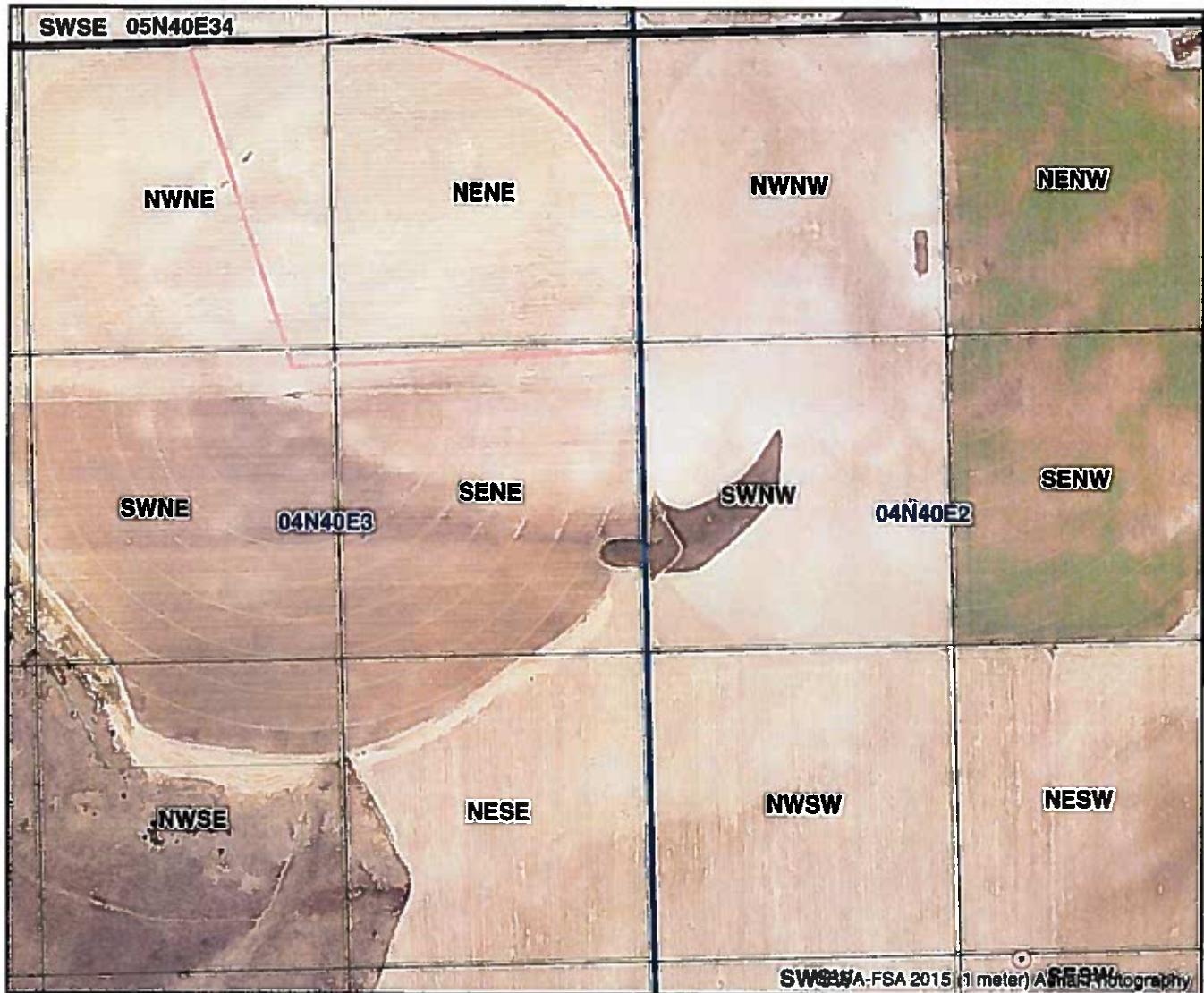
RENTAL AGREEMENT CONDITIONS OF ACCEPTANCE

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 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.
9. This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 3.5 afa per acre at the field headgate for irrigation of the lands above.
10. The following rights are diverted through point(s) of diversion described above: 22-2242A, 22-2242B, 22-7336 and 22-10897.

Idaho Water Resource Board
Water Supply Bank Rental Agreement No. 14

Effective until December 31, 2020

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



⊙ Authorized Rental Point of Diversion

⬜ Authorized Rental Place of Use

⬜ Townships

⬜ PLS Sections

⬜ Quarter Quarters



0 0.25 0.5 Miles

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

RECEIVED

OCT 31 2016

DEPARTMENT OF
WATER RESOURCESApplicant Name: Lee Sutton

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

Yes ☒ No ☐

If yes, specify companion water rights in Section 4

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

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

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

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

MINIMUM REQUIREMENT CHECKLIST

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

		Yes	
		☒	Completed <i>Application to Rent Water from the Board's Water Supply Bank</i>
		☒	Confirmation that this form has been printed single sided, per requirement of the Water Supply Bank
Attachment	N/A	Yes	
2	☒		A map showing the proposed point(s) of diversion, place(s) of use, and water diversion and distribution systems proposed to be used with your rental request
3A	☒	☐	Detailed information on a proposed use of rental water
3F	☒	☐	Authorization from the owner/operator of the rental point(s) of diversion
3H	☐	☒	Water modeling to account for the impacts of the rental request
3J	☒	☐	Documents justifying a rate of flow greater than 0.02 cfs/acre
3K	☒	☐	Authorization from the owner/operator of the property at the proposed rental place(s) of use
4B	☒	☐	Explanation of how the rental water will sufficiently accomplish your rental purposes
4C	☒	☐	Explanation of consumptive use amounts for water rights experiencing a change in nature of use

Department Use Only – Proposed Water Right(s)

22-7336

**STATE OF IDAHO
WATER RESOURCE BOARD**

Application to Rent Water (Continued)

1. CONTACT INFORMATION

A. Applicant Lee Sutton

Mailing Address <u>1577 E. 10000 S.</u>	Rexburg	Idaho	83440
	Street	City	State Zip Code
Email Address <u>lhsutt@ida.net</u>	Phone Number <u>(208) 356-6392</u>		

B. Is this application being completed by an authorized representative on behalf of the applicant? Yes ☒ No ☐
 If yes, representatives (includes company employees if the applicant is a corporation, as well as legal counsel or consultants) should provide their information below if they desire to be included on correspondence with the rental applicant.

Representative <u>Robert L. Harris</u>	Professional Title <u>Attorney</u>	
Organization <u>Holden, Kidwell, Hahn & Crapo, P.L.L.C.</u>	Relationship to Applicant <u>Attorney</u>	
Mailing Address <u>P.O. Box 50130</u>		
Email Address <u>rharris@holdenlegal.com</u>	Phone Number <u>(208) 523-0620</u>	

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:

The Applicant desires to rent water to continue with the same prior Water Supply Bank Rental Agreement (see attached) which will expire at the end of 2016. The rental allows 46 additional acres to be irrigated on Applicant's farm above what his existing water rights allow him to irrigate.

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)
1.24 CFS	217.5 AF	CFS	AF	62.1 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?	
04/1/2017	7/1/2017	☐ 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.

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):

Well and mainlines into pivots. System is already installed and fully operational.

- 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
NWSESW, Sec. 2, 4N, 40E	Ground water	22-2242A, 22-2242B, and 22-10897

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 62.1 (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:

None.

STATE OF IDAHO
WATER RESOURCE BOARD

Application to Rent Water (Continued)

4. RENTAL REQUESTS FOR SPECIFIC WATER RIGHTS

A. Are you requesting to rent specific water rights?

Yes ☒ No ☐

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

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

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

Water Right Elements Leased to Water Supply Bank					Leased totals, minus water right elements involved in active rental agreements, equals water right elements available for rent	Water Supply Bank Rental Request		
Water Right Number (leave blank if sub-total of combined limits)	Nature of Use	Diversion Rate (CFS)	Volume (AF)	Acres (AC)		Diversion Rate (CFS)	Volume (AF)	Acres (AC)
22-7336	Irrigation	1.64	287.0	82.0		1.24	217.5	62.1
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	1.24	217.5	62.1
						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**:

N/A

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:

This same rental was allowed previously. The water right owner was approached by the Applicant to sell the water right to the Applicant, but the water right owner is not willing to sell. The water right owner has now agreed to lease it to the Applicant for another four years (until the end of 2020).

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

If yes, describe:

- C. Was this rental application submitted in response to a Notice of Violation (NOV) or a pending NOV? Yes ☐ No ☒

If yes, describe the date and location of the NOV.

- D. Additional Information

The amount proposed to be rented from 22-7336 includes an amount that will be idled at the current place of use for 22-7336. Just like the prior approved rental, the actual diversion at the Applicant's place of use will be limited to 0.92 cfs, 161.0 AF and the irrigation of 46 acres annually.

DECLARATION

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

Signature of Applicant

Printed Name of Applicant

Date


Signature of Representative

Robert L. Harris

Printed Name of Representative

10/28/2016

Date

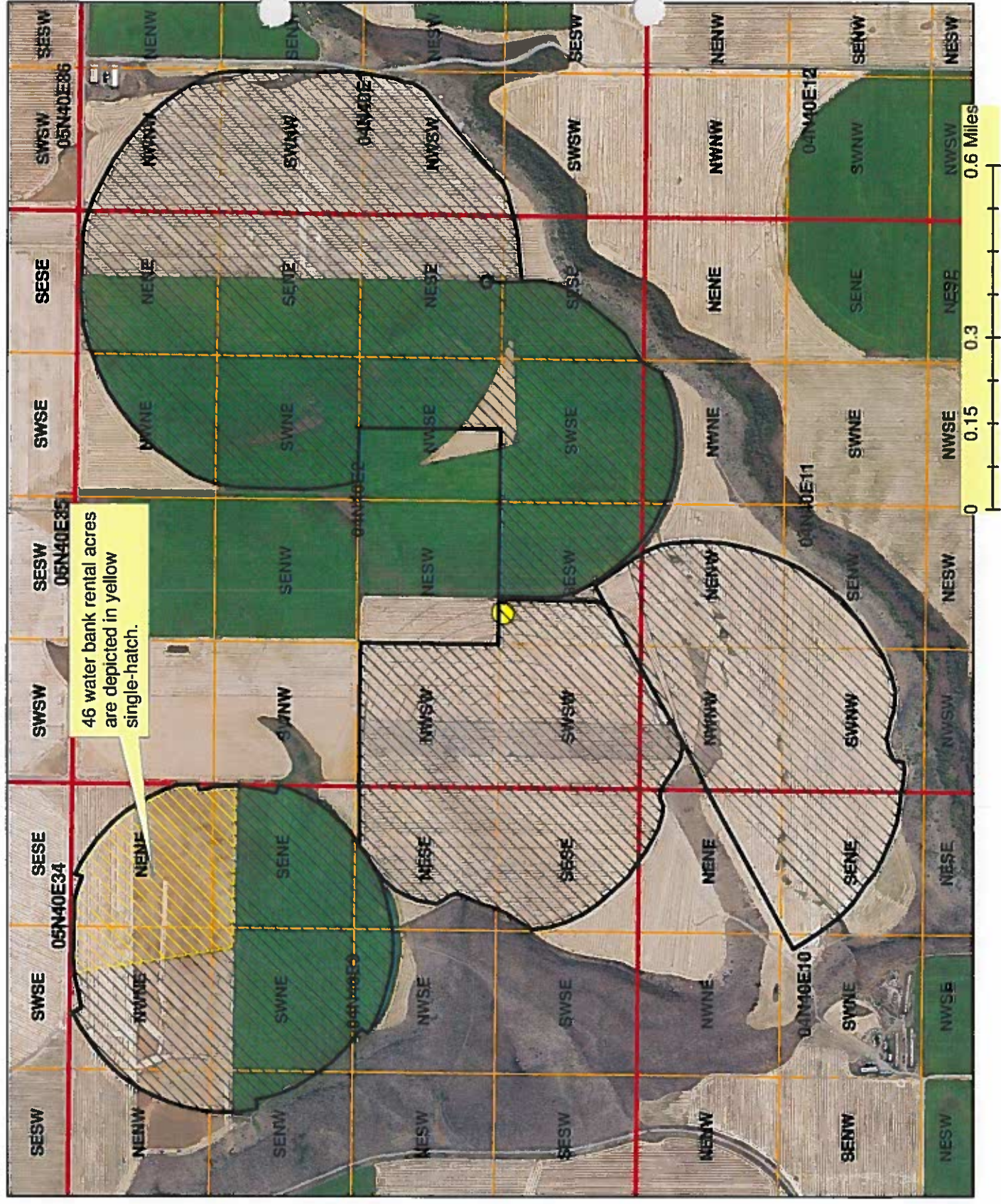
Mail to:

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

SUTTON WATER BANK APPLICATION --ATTACHMENT 2



- Legend**
- Permissible_POU
 - Water Bank Rental Acres
 - 778 Acre POU
 - POD
 - Section Lines
 - Quarter Quarters



Prepared by:
Robert L. Harris
2013 NAIP Aerial Photo

EXHIBIT 3H

Modeling was previously performed for this same rental by the Department in 2012 through 2015. In 2016, the applicant requested that the Department rely upon the prior modeling. IDWR kindly re-ran the modeling with ESPAM 3.2, resulting in the need to only lease 62.1 acres at the water right place of use in order to allow for the irrigation of 46 acres at the proposed rental place of use. The Applicant requests that the prior modeling information be used, and based on that analysis, the Applicant must rent 62.1 acres at the place of use for Water Right No. 22-07336 in order for the Applicant to irrigate 46 acres at his desired place of use.

Even though 22-07336 has been used at the renter's place of use for the past four (5) years, which if modeled now may show a reduced number of acres needed for mitigation for the new rental application, the Applicant does not intend to change the prior modeling or seek any credit under the transfer tool for the recently-expired rental agreement. The rental application should be processed as though 22-07336 has been fully used at its current place of use. The Applicant has taken this position in order to lessen the processing time and burden of review of the lease/rental package by the water bank staff such that the lease/rental package is the same as it was under the prior rental agreements.

If the water bank staff would like the Applicant to re-run the model instead of relying up the same and existing modeling, please contact Rob Harris at 523-0620 as soon as possible.

October 27, 2016

To: Idaho Department of Water Resources

From: Robert Smith and Sally Smith

Subject: Lee H. Sutton Water Bank Rental—Lease/Rental Package for Water Right No. 22-7336.

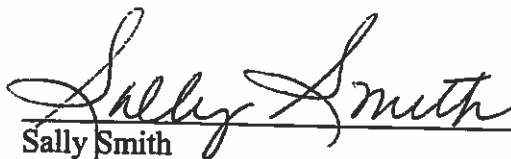
We, Robert Smith and Sally Smith, are the owners of Water Right No. 22-7336. This water right allows for the diversion of 1.64 cfs and 287 AFA for the irrigation of 82 acres. A 62.1-acre portion of this water right was previously leased to Lee H. Sutton through the Idaho Water Resource Board Water Supply Bank. The lease expires on October 31, 2016.

We recently submitted a new application to lease Water Right No. 22-7336 into the Idaho Water Resource Board Water Supply Bank. We understand that Lee H. Sutton is submitting a new application to rent the same 62.1-acre portion of this water right.

We desire to have Lee H. Sutton lease the same 62.1-acre portion under his new rental application as he did under the prior rental agreement through the end 22-7336's expiration date in the water supply bank on December 31, 2020. In effect, we desire that our lease application to the Idaho Water Resource Board Water Supply Bank of Water Right No. 22-7336 be packaged together with Lee H. Sutton's rental application as part of a lease/rental package.



Robert Smith



Sally Smith



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

January 21, 2016

LEE H SUTTON
1577 E 10000 S
REXBURG ID 83440

**RE: RENTAL OF WATER FROM THE WATER SUPPLY BANK
WATER RIGHT NO. 22-7336**

Dear Renter:

Please find enclosed a receipt in the amount of **\$3,697.50** and a copy of a fully executed Water Supply Bank Rental Agreement in connection with the rental of 217.5 acre-feet of water for irrigation of 62.1 acres during 2016. 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 \$3,327.75 of the rental fee will be paid to the lessor(s) and 10% or \$369.75 will be retained by the Department to offset administrative costs.

If you have any questions, please contact me at (208) 287-4946.

Sincerely,

Michele Edl
Sr. Water Resource Agent

Enclosures: Receipt No. C101435
Rental Agreement (copy)

c: Sascha Marston – Fiscal
James Cefalo – IDWR Eastern Regional Office
✓ Robert Harris – Holden Kidwell Hahn & Crapo

DEPARTMENT OF
WATER RESOURCES

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:

Lee H. Sutton
Signature of Renter

Lee H. Sutton 1-19-16
Printed Name and Title* owner Date

Signature of Renter

Printed Name and Title*

Date

*Please provide title of signatory if signing on behalf of a company or organization or with power of attorney

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

By Brian Patton
BRIAN PATTON, Acting Administrator
Idaho Water Resource Board

Date 1/20/2016

Rental Approved by IDWR Cheryl Webb

Date 1-20-2016

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

WATER USE DETAILS

LOCATION OF POINT(S) OF DIVERSION

GROUND WATER NW¼SE¼SW¼ Sec. 2 Twp 04N Rge 40E MADISON County

BENEFICIAL USE

IRRIGATION

SEASON OF USE

04/01 TO 10/31

RENTER'S PLACE OF USE: IRRIGATION

Twp	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
04N	40E	03	32	9.5	0.5	4.0													46.0
			Lot 1	Lot 2															

Total Acres: 46.0

CONDITIONS APPLICABLE TO ALL RENTED WATER RIGHTS

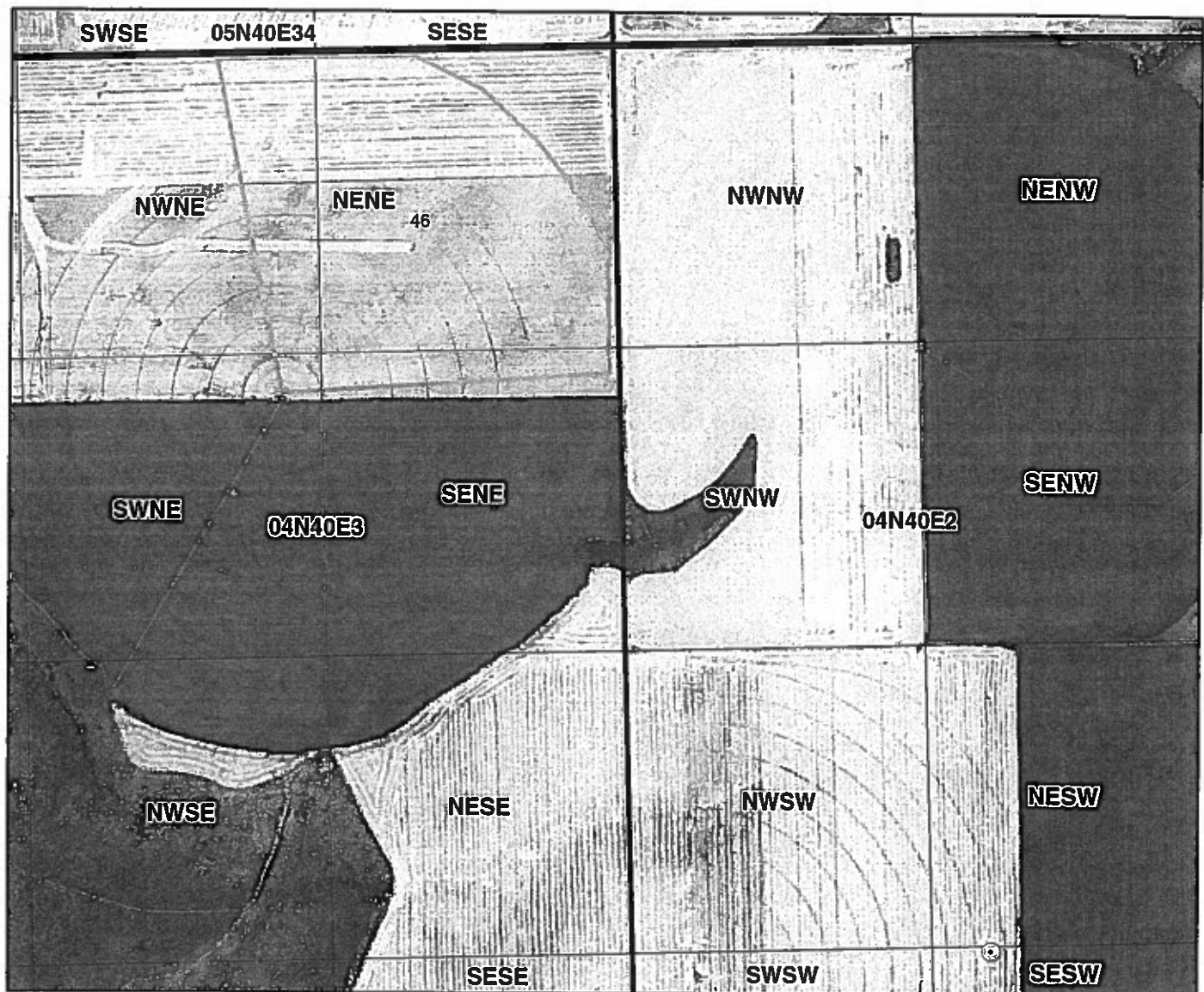
1. The use of water under this agreement shall be subject to the provisions of Idaho Code § 42-1766.
2. Rental of the specified right from the bank does not, in itself, confirm the validity of the right or any elements of the water right, or improve the status of the right including the notion of resumption of use. It does not preclude the opportunity for review of the validity of this water right in any other department application process.
3. Use of water under this agreement does not constitute a dedication of the water to renter's place of use, and upon expiration of this agreement, the points of diversion and place of use of the water shall revert to those authorized under the water right and/or again be available to rent from the bank.
4. This rental does not grant any right-of-way or easement to use the diversion works or conveyance works of another party.
5. 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.
6. Renter agrees to comply with all applicable state and federal laws while using water under this agreement.
7. 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.
8. Renter acknowledges and agrees that the Director may terminate diversion of water if the Director determines there is not a sufficient water supply for the priority of the right or portion thereof being rented.
9. Failure of the renter to comply with the conditions of this agreement is cause for the Director to rescind approval of the rental agreement.
10. This rental agreement does not authorize the construction of a well.
11. The renter must diligently pursue a permanent water right to provide for the uses authorized under this rental agreement.
12. This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 3.5 afa per acre at the field headgate for irrigation of the lands above.

13. The following rights are diverted through point(s) of diversion described above: 22-2242A, 22-2242B and 22-10897.
14. This water right is subordinate to all water rights with a priority date earlier than April 12, 1994, that are not decreed as enlargements pursuant to Section 42-1426, Idaho Code. As between water rights decreed as enlargements pursuant to Section 42-1426, Idaho Code, the earlier priority right is the superior right.

Idaho Water Resource Board
Water Supply Bank Rental Agreement

Effective until December 31, 2016

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



2013 USDA-FSA Aerial Photography

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



0 0.25 Miles

RECEIVED

DEC 18 2015

DEPARTMENT OF
WATER RESOURCES

WATER SUPPLY BANK LEASE CONTRACT

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

LESSOR: ROBERT E. SMITH
512 S MILL HOLLOW RD
REXBURG ID 83440
(208) 356-7552

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. On October 29, 2015, the Lessor filed an application to lease the water right described below into the Water Supply Bank.
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 the 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 RIGHT:** The Lessor shall lease and the Board shall accept into the Bank the Applicant's water right described as follows:

Summary of Water Right or Portion Leased to the Bank

Water Right	Priority Date	Source	Tributary	Leased Rate	Annual Leased Volume	Total Leased Acres
22-7336	10/22/1980	Ground water	NA	1.64 cfs	287.0 af	82.0 ac

Lease Totals

1.64 cfs 287.0 af 82.0 ac

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, 2016 to December 31, 2020. This Lease shall bind the parties and take effect when both parties have signed it.
4. **WATER SUPPLY BANK CONDITIONS OF ACCEPTANCE:** The Lessor shall abide by all terms and conditions contained in the Water Supply Bank Conditions of Acceptance, attached hereto as "Attachment A" and incorporated herein by this reference.
5. **DUPLICATE ORIGINAL:** This Lease is executed in duplicate. Each of the documents with an original signature of each party shall be an original.

WATER SUPPLY BANK LEASE CONTRACT

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

ROBERT E. SMITH
512 S MILL HOLLOW RD
REXBURG ID 83440

By Robert E. Smith

Date 12-12-2015

Printed Name Robert E. Smith

Title Owner

IDAHO WATER RESOURCE BOARD
322 EAST FRONT ST
PO BOX 83720
BOISE ID 83720-0098

By Brian Patton
Brian Patton, Acting Administrator
Idaho Water Resource Board

Date 12/21/2015

Lease approved by IDWR

By Weber

Date 12-21-2015

ATTACHMENT A

WATER SUPPLY BANK CONDITIONS OF ACCEPTANCE

WATER RIGHT NO. 22-7336

The water right or portion thereof leased to the bank is described as follows:

Lessor: ROBERT E. SMITH
512 S MILL HOLLOW RD
REXBURG ID 83440
(208) 356-7552

Location of Point(s) of Diversion for Water Right 22-7336

GROUND WATER SENESE Sec. 29, Twp 06N, Rge 40E MADISON County

<u>Water Right</u>	<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
22-7336	Irrigation	04/01	to 11/01	1.64 cfs	287.0 af
Total:				1.64 cfs	287.0 af

Place of Use to be Idled Under This Lease: IRRIGATION

Twp	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
06N	40E	29													27.0	21.0			82.0

Total Acres: 82.0

Conditions Applicable to Leased Water Right

1. The water right 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, nor does it improve the status of the right or accomplish the 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 after the following rental season.
11. The water right leased to the bank is subject to all prior water rights and shall be administered in accordance with Idaho law and applicable rules of the Department of Water Resources.



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

January 11, 2017

LEE H SUTTON
1577 E 10000 S
REXBURG ID 83440

**RE: RENTAL OF WATER FROM THE WATER SUPPLY BANK
WATER RIGHT NO. 22-7336**

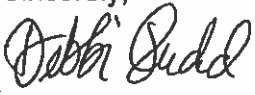
Dear Renter:

Please find enclosed a receipt in the amount of **\$3,697.50** and a copy of a fully executed Water Supply Bank Rental Agreement in connection with the rental of 217.5 acre-feet of water for irrigation of 46.0 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 \$3,327.75 of the rental fee will be paid to the lessor(s) and 10% or \$369.75 will be retained by the Department to offset administrative costs.

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

Sincerely,


Gr Water Supply Bank

Enclosures: Receipt No. C102863
Rental Agreement (copy)

c: Sascha Marston – Fiscal
James Cefalo – IDWR Eastern Regional Office
Robert Harris – Holden Kidwell Hahn & Crapo



Holden Kidwell
Hahn & Crapo P.L.L.C.
L A W O F F I C E S

RECEIVED

JAN 09 2017

DEPARTMENT OF
WATER RESOURCES

1000 Riverwalk Drive, Suite 200
PO Box 50130
Idaho Falls, Idaho 83405

Tel: (208) 523-0620
Fax: (208) 523-9518
www.holdenlegal.com

Email: rharris@holdenlegal.com

January 6, 2017

Debbi Judd
Idaho Water Supply Bank
Idaho Department of Water Resources
PO Box 83720
Boise, ID 83720-0098

RE: Executed Water Supply Bank Rental Agreement No. 14 (Lee Sutton).

Dear Debbi:

Thank you for your letter dated December 29, 2016, which contained a *Water Supply Bank Rental Agreement* for my client, Lee Sutton. We have reviewed the agreement, and find that it is consistent with the water bank applications we submitted. Accordingly, Mr. Sutton has executed the agreement, and the original is enclosed for Brian Patton's signature. We have also included a check in the amount of \$3,697.50 as instructed in the letter.

We appreciate your continued processing of this application. If you have any questions or concerns, please let me know.

Best Regards,

Robert L. Harris
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

Enclosures

G:\WPDATA\RLH\16818 Sutton, Lee\02\2017-01-06, Judd.docx



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

December 29, 2016

LEE H SUTTON
1577 E 10000 S
REXBURG ID 83440

**RE: APPLICATION TO RENT WATER FROM THE WATER SUPPLY BANK
WATER RIGHT NO. 22-7336**

*****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 \$3,697.50 was calculated based on the current rental rate of \$17.00 per acre-foot times a diversion volume of 217.5 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 \$3,697.50 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 \$3,327.75 of the rental fee will be paid to the lessor(s) and 10% or \$369.75 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
Robert L Harris – Holden Kidwell Hahn & Crapo

Thiel, Sandra

From: Cefalo, James
Sent: Friday, December 02, 2016 5:11 PM
To: Thiel, Sandra
Subject: RE: Lee Sutton water supply bank rental of right 22-7336

Sandra,

If the latest version of the transfer tool model shows less impacts than the previous version, Sutton should be allowed to take advantage of that difference. The updated model run should be accepted. I don't have any concerns with the proposal. I don't see any way that the newly designated GWMA would affect this type of WSB proposal.

James

From: Thiel, Sandra
Sent: Friday, December 02, 2016 1:43 PM
To: Cefalo, James
Subject: Lee Sutton water supply bank rental of right 22-7336

Hi James, We received a water supply bank rental application from Lee Sutton to rent water right 22-7336. This right was first leased into the bank from 2010 to 2015. Mr. Sutton rented the water last year and proposes to do the same rental this year. We modeled this lease/rental in 2012 and found that they needed mitigation. Mr. Sutton (working with Rob Harris) included modeling in their 2016 application. That modeling also found the need for mitigation, although they found that somewhat less was needed. My question to you is do they need to model again for this rental? They are requesting water for 4 years. Does the new Ground Water Management Area impact this transaction? As always thanks for your help.

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



Holden Kidwell
Hahn & Crapo P.L.L.C.
LAW OFFICES

RECEIVED

OCT 31 2016

DEPARTMENT OF
WATER RESOURCES

1000 Riverwalk Drive, Suite 200
PO Box 50130
Idaho Falls, Idaho 83405

Tel: (208) 523-0620
Fax: (208) 523-9518
www.holdenlegal.com

Email: rharris@holdenlegal.com

October 28, 2016

VIA FEDERAL EXPRESS

Idaho Water Supply Bank
Idaho Department of Water Resources
322 East Front St.
Boise, ID 83702-7374

RE: *Application to Rent Water from the Board's Water Supply Bank Submitted on Behalf of Lee Sutton.*

Dear Water Bank Agent:

Enclosed for processing is an *Application to Rent Water from the Board's Water Supply Bank* submitted on behalf of Lee Sutton. As contained in the enclosed documents, Mr. Sutton proposes to essentially extend a prior water supply bank rental agreement that was approved in 2016. The water right that was rented by Mr. Sutton is Water Right No. 22-7336, which is a water right owned by Robert and Sally Smith. Therefore, we are submitting this rental application as a lease/rental package, and we have included a signed statement from the Smiths indicating their desire to have Mr. Sutton lease the same 62.1 acre portion of Water Right No. 22-7336 that he leased previously, as well as the Smiths' approved *Water Supply Bank Lease Contract*. The Smiths desire that Mr. Sutton rent the water through 2020. We therefore request that this application be processed as a lease/rental package with the 62.1 acre portion of Water Right No. 22-7336 that was rented previously.

Please note that because this application is identical to last year's approved rental, we are relying upon IDWR's modeling that they did last year under ESPAM 3.2, which reduced the 69.5 acre request from 2012-15 down to 62.1 acres in 2016. However, if for any reason you believe additional modeling is necessary, please do not return the rental application or separate the lease/rental package that we have submitted. Simply contact me at rharris@holdenlegal.com if any additional modeling needs to be performed, and we will perform it immediately. This rental application is very important to Mr. Sutton, and we do not want it to lose its place in the processing line so that it can be processed as soon as possible.

If you have any questions or concerns, please let me know.

Established in 1896

Idaho Water Supply Bank
Idaho Department of Water Resources
October 28, 2016
Page 2 of 2

Best Regards,



Robert L. Harris
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

Enclosures

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Right 22-7336 is leased into the Bank through 2020. This is a continuation of the 2016 rental
MEMORANDUM

To: Water Right(s) 22-7336

From: Michele Edl (*Sandra Thiel for 2016-2020*)

Date: December 5, 2016

Re: Review of Lee H Sutton's Rental Application

See 2016 memo for complete analysis

PURPOSE/NARRATIVE: On October 31, 2016, attorney Robert L Harris submitted an application to rent water from the State Water Supply Bank on behalf of Lee H. Sutton. The rental application proposes to rent a portion of water right 22-7336 to irrigate 46 acres in gov't lot 1 (NENE), Twp 4N, Rge 40E, sec 34. The applicant requested a rental agreement with a 5-year duration which is the anticipated term for the lease of right 22-7336.

AUTHORITY TO FILE: According to the June 6, 2016 Madison County parcel data the rental place-of-use is owned by Robert E Smith and Sally Smith. *The rental application included a document signed by Robert and Sally Smith expressing their desire for Lee Sutton to continue the rental of water on their property through December 31, 2020. The previous rental was for one year, 2016. The modeling submitted for last year's rental included years through 2020. This rental will be through 2020.*

WATER RIGHT VALIDITY:

Water Right 22-7336 has been leased to the WSB since 2010. It has not been used at the authorized POU's, which are now within the municipal service area for the City of Rexburg. *A review of aerial photography of those POU's shows that the water right has been idled at that location.*

INJURY TO OTHER WATER RIGHTS: Mr. Harris provided modeling of the ESPA in the lease-rental package. However, the modeling is an echo of the results which were provided by IDWR personnel in 2012 for Mr. Sutton's 2012-2015 rental.

ENLARGEMENT OF USE: No enlargement is evident through the rental. ESPA modeling indicates that mitigation is needed. Similar to the previous rental agreement, this rental agreement will require that more water be rented from the right than will be authorized for actual diversion and use.

LOCAL PUBLIC INTEREST: This application is very similar to an application submitted by Lee Sutton, for the 2012-2016 seasons. Review staff has no information to suggest this application is inconsistent with the local public interest.

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

DEPARTMENT STAFF OR WATERMASTER COMMENTS: The rented right is not subject to a Water District. Comment was requested from Eastern Region on December 2, 2016.

