

WATER SUPPLY BANK LEASE CONTRACT No. 259

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

LESSOR: BLACK BUTTE HILLS LLC
C/O GREGORY VIK
PO BOX 1607
BELLEVUE, WA 98009

RECEIVED

DEC 27 2016

DEPARTMENT OF
WATER RESOURCES

RECITALS

1. The Board is authorized under chapter 17, title 42, Idaho Code to operate a water supply bank and to contract with lessors to act as an intermediary in facilitating the rental of water.
2. The Lessor has filed a completed application to lease water rights described below into the Water Supply Bank on forms supplied by the Idaho Department of Water Resources and received by the Department on July 13, 2016.
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)
37-22771	10/30/1974	GROUND WATER,	4.490	1,113.90	371.30
Combined Limit Totals			4.490	1,113.90	371.30
Combined Lease Totals			4.490	1,113.90	371.30

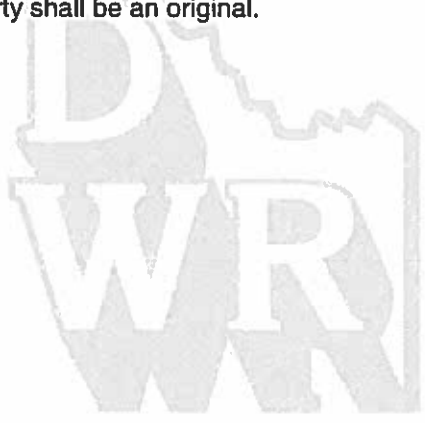
Summary of Water Rights Elements Rentable From the Bank

Water Right	Diversion Rate (CFS)	Diversion Volume (AF)	Acres (Limited) (AC)	Rate Per Acre (CFS/AC)	Volume Per Acre (AF/AC)
37-22771	0.000	0.00	0.00	0.000	0.00
Combined Limit Totals	0.000	0.00	0.00	0.000	0.00

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: UNRENTABLE

3. **TERM OF LEASE:** The term of this lease shall be January 1, 2016 to December 31, 2017. 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: BLACK BUTTE HILLS LLC
C/O GREGORY VIK
PO BOX 1607
BELLEVUE, WA 98009

By [Signature]
Title President
Date 12/22/16

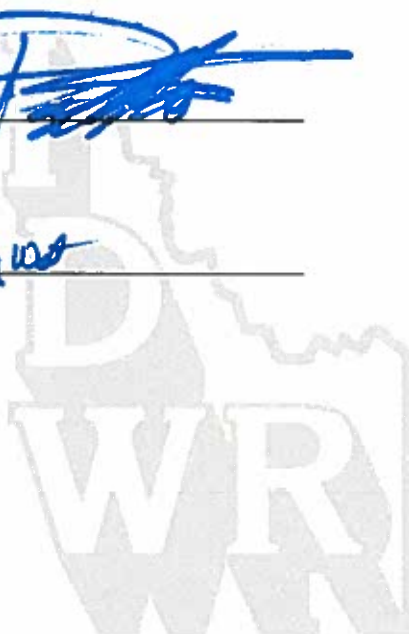
IDAHO WATER RESOURCE BOARD
322 East Front Street
P.O. Box 83720
Boise, ID 83720-0098

By [Signature]
Brian Patton, Acting Administrator
Idaho Water Resource Board

Date 12/28/2016

Lease approved by IDWR [Signature]

Date 12-28-2016



ATTACHMENT A
WATER SUPPLY BANK CONDITIONS OF ACCEPTANCE
FOR LEASE CONTRACT NO. 259

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): 37-22771

GROUND WATER	SWNW	Sec. 1	Twp 02S	Rge 17E	BLAINE County
GROUND WATER	SWSE	Sec. 11	Twp 02S	Rge 17E	CAMAS County

Water Right	Beneficial Use	Season of Use			Diversion Rate (CFS)	Volume (AF)
		From		To		
37-22771	IRRIGATION	05/01	to	10/01	4.490 cfs	1,113.90 AF
Totals:					4.490 cfs	1,113.90 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	
02S	17E	1							6.2			1.1	5.9						13.2
02S	17E	2				0.4								13.4	1.0	1.1	33.2	3.8	52.9
02S	17E	11	25.5	34.0	28.0	17.7	31.9			15.0					16.3	12.0	19.0	27.0	226.4
02S	17E	12								0.8	14.7	24.3	28.0	11.0					78.8

Total Acres: 371.3

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. The period of use for the irrigation described in this approval may be extended to a beginning date of 4/15 and an ending date of 10/31 provided that beneficial use of the water can be shown and other elements of the right are not exceeded. The use of water before 5/1 and after 10/1 is subordinate to all water rights having no subordinated early or late irrigation use and a priority date earlier than the date of the decree on February 3, 2010.
13. This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 3.5 afa per acre at the field headgate for irrigation of the place of use.
14. 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. 37.
15. The right holder shall maintain a measuring device and lockable controlling works of a type approved by the Department in a manner that will provide the watermaster suitable control of the diversion(s).
16. Rights 37-2211, 37-11989, and the unleased portion 37-22771 when combined shall not exceed the irrigation of 377.2 acres.

Idaho Water Resource Board
Water Supply Bank Lease

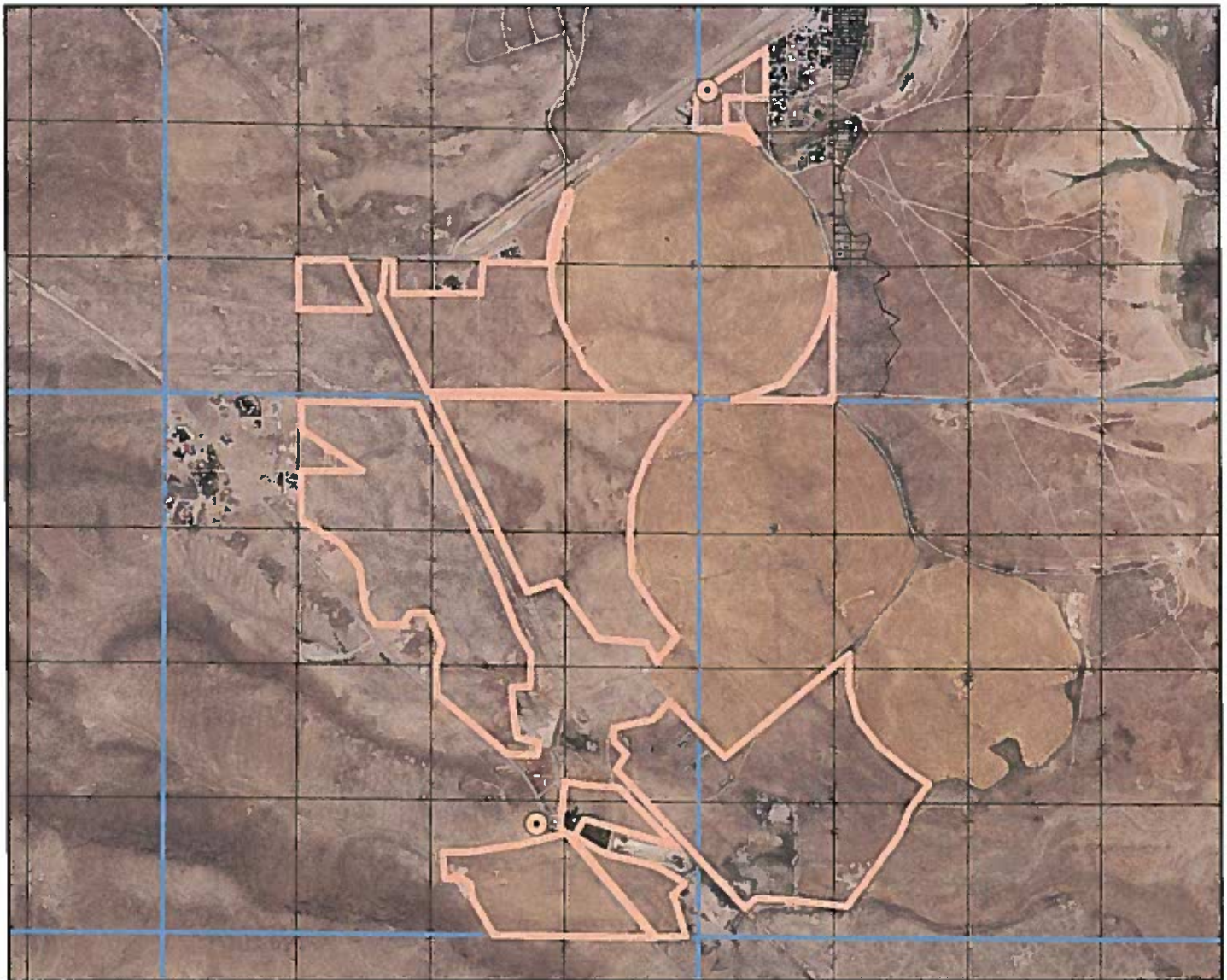
37-22771

Effective until December 31, ~~2016~~

2017

W

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



- Approved Lease Point of Diversion
- Approved Lease Place of Use
- Townships
- PLS Sections
- Quarter Quarters



0 0.5 1 Miles

RECEIVED

JUL 13 2016

DEPARTMENT OF
WATER RESOURCES

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

An application to lease or sell a water right into the Water Supply Bank must be prepared in accordance with the minimum requirements listed below to be acceptable for processing by the Department. 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. **Incomplete applications will be returned to applicants for completion.**

Designated Applicant BLACK BUTTE HILLS LLC
C/O GREGORY VIK
(Select one owner – see item 1A on the application)

Water Right No. 37-22771
(One water right per application)

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

YES

- ☒ Completed *Water Supply Bank Lease or Sale Application Checklist* (this form).
- ☒ Completed *Application to Sell or Lease a Water Right to the Water Supply Bank* (pages 2-3).
- ☐ 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.

Attachment N/A YES

- | | | | |
|----|-------------------------------------|-------------------------------------|--|
| 1A | ☐ | ☒ | Contact information for <i>all owners</i> of the water right that is being leased or sold on this application. |
| 1B | ☐ | ☐ | An Internal Revenue Service (IRS) Form W-9 for the Designated Applicant. |
| 1C | ☒ | ☐ | <i>Notice of Change in Water Right Ownership</i> form (accessible from www.idwr.idaho.gov). |
| 1D | ☒ | ☐ | Written consent from irrigation district or water delivery company. |
| 1E | ☐ | ☒ | 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. |
| 3E | ☐ | ☒ | Evidence demonstrating that a water right has not been lost through abandonment or forfeiture pursuant to Section 42-222(2), Idaho Code . |
| 4 | ☐ | ☒ | 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 . |

Department Use Only

Fee Amount \$ <u>250</u>	Received By: <u>AO</u>	Date Received: <u>7-13-16</u>	Receipt # <u>C102267</u>
W-9 received? Yes ☐ No ☒ (Route W-9 to Fiscal)		Name on W-9:	

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

1. CONTACT INFORMATION

- A. An application to sell or lease a water right to the Water Supply Bank must be completed by a Designated Applicant who is a recognized owner of the water right being sold or leased to the Water Supply Bank. If there are additional owners recorded for the property to which the water right is appurtenant, those individuals must authorize the Designated Applicant to represent them on this application at 1A of this application package.

Designated Applicant BLACK BUTTE HILLS LLC
C/O GREGORY VIK Email Address _____

Mailing Address PO BOX 1607 BELLEVUE, WA 98009 Phone Number (425) 460-2542

☒ 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 completed an IRS Form W-9 (Attachment 1B)? W-9 Form has previously Yes ☐ No ☒
been submitted

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 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 1D).

E. 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 1E).

Name of Representative Greg Sullivan Organization Brockway Engineering

Professional Title Engineer Email Address greg.sullivan@brockwayeng.com

Mailing Address 2016 N. Washington St Suite 4 Twin Falls, Id 83301 Phone Number 208-736-8543

☐ 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

Water Right Number 37-22771 ☐ 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 a water right is being offered, complete Attachment 2)

3. GENERAL INFORMATION

- A. Please provide a description of the current water diversion system.

Existing well, mainline and delivery systems.

- B. 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.

Water right 37-2211 is an irrigation water right for 85.0 acres. None of the 85.0 acres under 37-2211 is being offered at this time. Water right 37-11989 provides irrigation storage, irrigation from storage and diversion to stora

- C. Are any of the water rights identified in question 3B stacked with the water right proposed for lease? Yes ☒ No ☐

Stacked water rights are water rights that are utilized 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.

D. Will the present place of use continue to receive water from any other source?

Yes ☐ No ☒

If yes, describe. _____

E. Has any portion of this water right undergone a period of five or more consecutive years of non-use?

Yes ☐ No ☒

If yes, describe and attach Watermaster records or other evidence to demonstrate that the water right has not been lost through abandonment or forfeiture pursuant to Section 42-222(2), Idaho Code. _____

F. Is this water right involved in any other IDWR process such as an application for transfer or a mitigation plan? Yes ☐ No ☒

If yes, describe. _____

4. MAP

Plat map, survey map, or aerial photograph clearly showing the specific acres proposed to be idled by this lease application.

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: 2016 to 2016 (maximum lease period 5 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 provisions are stayed.
5. Acceptance of a water right into the Bank does not, in itself, confirm the validity of the water right or any elements of the water right.

Signature of Designated Applicant

Printed Name

Greg Vike, President
of Investments Manager LLC
Manager of Kitchikah Ranch LLC

Date

6/7/16

Signature of Authorized Representative

Printed Name

Date

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

**STATE OF IDAHO
WATER RESOURCE BOARD**

ATTACHMENT 1A

Additional Water Right Holders Party to the Lease Application

List all individuals or business entities that are owners of the property to which the water right on this application is appurtenant. All water right holders must be signatories to 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). 37-22771

		Applicant #2	Applicant #3
Name	BLACK BUTTE HILLS LLC C/O GREGORY VIK		
Mailing Address	PO BOX 1607 BELLEVUE, WA 98009		
Phone Number	(425) 460-2542		
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	 PRES. OF INVESTMENTS MANAGER LLC, MANAGER OF PITCHFORK RANCH LLC		

	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			

A vertical number line labeled "Feet" at the top. It has four major tick marks labeled 0, 750, 1,500, and 3,000 from bottom to top. The line is a simple vertical line with horizontal tick marks extending to the left and right at each labeled point.

BROCKWAY ENGINEERING, PLLC.
ALR - Date: 7/6/2015

**BLACK BUTTE HILLS LLC - MAGIC RANCH
37-22771 WATER BANK LEASE 2015
NAIP 2013 AERIAL**

Legend

- 37-22771_POU_Update
- WSB_2015_37-22771
- townshp
- Sections
- ladesc



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

BLACK BUTTE HILLS LLC
C/O GREGORY VIK
PO BOX 1607
BELLEVUE WA 98009

RE: WATER SUPPLY BANK LEASE CONTRACT FOR WATER RIGHT 37-22771

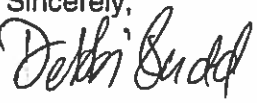
Dear Lessor:

Water right **37-22771** was leased into the Water Supply Bank (Bank) as of July 13, 2016, in accordance with the enclosed executed lease contract. **Your water right, as described on the lease contract, is considered leased into the Bank and should remain unused until it is formally released from the Bank.** More information and further restrictions placed on your water right while leased can be found in conditions of acceptance of the lease contract. Read the conditions of acceptance carefully.

The right will automatically be released from the Bank on **December 31, 2017**, unless the right is 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 right from the Bank prior to the release date, submit a written request on the *Request to Release a Water Right from the Bank* form. This form is available on our public website at www.idwr.idaho.gov. **Please note your water right may not be available for immediate release if it has been rented or is 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,


Debbie Sudd
Water Supply Bank

Enclosure: Executed Lease Contract

c: Greg Sullivan – Brockway Engineering
Corey Skinner - IDWR Southern Region
Kevin Lakey – Water District 37

Hersley, Jean

From: Greg Sullivan <greg.sullivan@brockwayeng.com>
Sent: Wednesday, December 28, 2016 7:27 AM
To: Hersley, Jean
Subject: RE: Black Butte Hills LLC
Attachments: 2017 Lease Date Update.pdf

Jean,

See attached document.

Greg Sullivan
Brockway Engineering
2016 North Washington Street, Suite 4
Twin Falls, Idaho 83301
208-736-8543

From: Hersley, Jean [mailto:Jean.Hersley@idwr.idaho.gov]
Sent: Tuesday, December 27, 2016 1:36 PM
To: greg.sullivan@brockwayeng.com
Subject: Black Butte Hills LLC

Attached is page 2 of the lease contract for 37-22771 in the name of Black Butte Hills LLC. Mr. Vik sent the contracts back signed. He was supposed to change the end date of the contract to December 31, 2017 and initial it. The Department was going to replace the changes in the contract and send out the contracts with the updated end date. Instead, Mr. Vik changed the begin date also. Black Butte Hills need this water right in the Bank for forfeiture protection.

I have attached a copy of page 2 of the lease contract. Please have Mr. Vik change the END date only, to December 31, 2017, initial and send back to me. You can email it to me for speedier service. The Dept. does not have Mr. Vik's email address on file to send it directly to him.

Thank you for your help.

Jean Hersley
Idaho Dept Water Resources
Technical Records Specialist II
208-287-4942



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 • Web Site: www.idwr.idaho.gov

GARY SPACKMAN
Director

C.L. "BUTCH" OTTER
Governor

December 5, 2015

BLACK BUTTE HILLS LLC
C/O GREGORY VIK
PO BOX 1607
BELLEVUE WA 98009

RE: APPLICATIONS TO LEASE WATER RIGHT 37-22771 TO THE WATER SUPPLY BANK

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

Dear Applicant:

The Department of Water Resources has completed its review of your application to lease the above-mentioned water right to the Water Supply Bank. **I have enclosed two original Water Supply Bank Lease Contracts for your review and signature. Please sign and return ALL Lease Contracts within 14 days.** Upon signature and return of the contracts, the Department will also sign the original contracts and return an executed copy to you. The Lease Contract is not considered final until you and the Department have both signed.

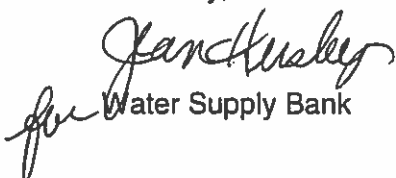
The right will automatically be released from the Bank on **December 31, 2016**, unless the right is released earlier by the Board, or upon your request. To release the right from the Bank prior to the release date, submit a written request on the Request to Release a Water Right from the Bank form. To propose a new lease period, submit a new Application to Sell or Lease a Water Right to the Water Supply Bank form along with applicable fees to the Department. These forms are available from any IDWR office or from our public website at <http://www.idwr.idaho.gov>. Please note your 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

Enclosure: Proposed Lease Contracts

c: Brockway Engineering PLLC

Webster, Clay

From: Skinner, Corey
Sent: Monday, October 17, 2016 12:08 PM
To: Webster, Clay
Subject: RE: Region and watermaster comments on WSB Lease Application for Black Butte Hills LLC 37-22771

No concerns from me.

From: Webster, Clay
Sent: Monday, October 17, 2016 12:07 PM
To: Skinner, Corey; watermanager@cableone.net
Subject: Region and watermaster comments on WSB Lease Application for Black Butte Hills LLC 37-22771

Corey and Kevin,

We are currently processing a WSB lease application to place the same portions of this water right back into the bank. It will remain un-rentable due to the fact that the applicant does not wish to lease the overlapping right into the bank. Do you have any concerns/comments? Thanks

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

WATER SUPPLY BANK
Agent Lease Review Checklist
Applicant(s) Name: Black Butte Hills

Memo Date: 10/17/2016

Water Right Number(s): 37-22771

Reviewers Name: Clay Webster

Quick Tools

Decreed Year	No Forfeiture Concerns Thru:
2009	2015
2010	2016
2011	2017
2012	2018
2013	2019

	Check box	COMMENTS/CONCERNS:
1 Fill out WSB Data Entry Checklist for Leases	x	
2 Reason for lease of water rights (Brief description of lease proposal in narrative)		Protect from Forfeiture
Portion of right	x	
All of right		
3 Check GWMA/CGWA/ADC and basin 63 areas of concern (note area in comments)		
	Yes No	
4 Rentable? If no explain in comments	x	Overlapping right not leased
5 Authority to file		
Current owner or designated applicant	x	POC for Black Butte Hills LLC
SOS Web site checked for business entity		
Other (explain in comments)		See letter in file from attorney
6 Water Right validity		
Decreed/Licensed/Statutory claim date (write in comments section)		Decreed 2/3/2010
Past irrigation to ensure forfeiture is not an issue if decreed or licensed over 7 years ago (consider transfers that changed the POU, rentals to the POU etc.)		
Has this right previously been leased to the bank or in CREP?	x	Leased in 2015
7 Injury to other water rights		None
If the POD is through a delivery entity, was consent provided?		NA
If the POD is through a delivery entity, was holdback required? (percentage in comments)		%
8 Enlargement concerns	Check box	
Complete a POU comparison overlap analysis	x	
Complete a combined limits review	x	
Complete POD overlap analysis (if there is an overlap add condition to lease)	x	
	Yes No	
Are there overlapping rights that need to be placed in the bank also?	x	
Will the place of use continue to receive water?	x	
9 Local Public Interest		
Does the processor know of any problems this action will cause for the local public?	x	
10 Have you contacted regional office and watermaster for comment/concerns?		
Send the watermaster comment request form or e-mail request	x	
11 Area Headgate requirement		
12 Is water right involved in any other department action? Pull file and check database () Ownership Change () Transfer () Mitigation () Other - Explain in comments	x	

13 Narrative

The department received this application to lease a portion of the irrigation of this right into the bank on July 13, 2016. This same portion was leased for the 2015 season. The right overlaps completely with 37-11989. The applicant has chosen not to lease (idle) the overlapping right. Therefore, this right will not be rentable. I found no other concerns with this lease. Earlier this year we had concerns of irrigation of the proposed idled area. However, further review of the landsat imagery showed that the water level was extremely high and they could have been getting percolation from the high GW level. Since this lease will not be rentable. No enlargement can occur.

Hersley, Jean

From: Greg Sullivan <greg.sullivan@brockwayeng.com>
Sent: Friday, July 22, 2016 9:35 AM
To: Hersley, Jean
Subject: RE: Black Butte Hills WSB Lease Application

Jean,

I talked with the farm manager yesterday and he said that the four locations receiving irrigation water this year are the three pivots and the solid set hand lines that are located in Sec 12 SWNW and NWSW and Sec 11 SENE and NESE. All four of these areas are not included in the proposed water supply bank lease areas.

He is does not know why the imagery you provided shows pink/red over the none irrigated areas. He is more than willing to allow any IDWR agent on the property to confirm their current irrigation practices.

Greg Sullivan
Brockway Engineering
2016 North Washington Street, Suite 4
Twin Falls, Idaho 83301
208-736-8543

From: Hersley, Jean [mailto:Jean.Hersley@idwr.idaho.gov]
Sent: Thursday, July 21, 2016 3:40 PM
To: Greg Sullivan <greg.sullivan@brockwayeng.com>
Subject: Black Butte Hills WSB Lease Application

Greg,

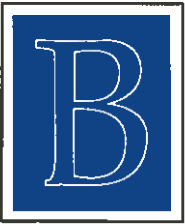
I am in the process of reviewing the WSB Lease Application for Black Butte Hills. Our aerial photography suggests a portion of the acres proposed for the Bank have been irrigated in 2016. I have attached two maps for your benefit. One map is from May, 2016 and the other from July, 2016. The area outlined in black are the acres in question. Please let me know if these acres have been irrigated or explain why the acres appear to have been irrigated. Thank you.

Jean Hersley
Idaho Dept Water Resources
Technical Records Specialist II
208-287-4942

RECEIVED

JUL 13 2016

DEPARTMENT OF
WATER RESOURCES



BROCKWAY
ENGINEERING
P.L.L.C.

Hydraulics

Hydrology

Water Resources

July 12, 2016

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

Re: Black Butte Hills LLC

Dear Mrs. Palmer:

Black Butte Hills LLC is submitting lease application for water right 37-22771. It is desired to lease 37-22771 to the Water Supply Bank for one year. Water right 37-22771 was leased into the Water Supply Bank for the 2015 irrigation season.

Sincerely,

Greg Sullivan, M.S., Engineer

Cc: Greg Vik, Rod Gonsales
Enc: Brockway Engineering Check # 13464 for \$250.00

CHARLES E.
BROCKWAY,
PH.D., P.E.

CHARLES G.
BROCKWAY,
PH.D., P.E.

2016 NORTH
WASHINGTON
STREET • SUITE 4

TWIN FALLS,
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Bellevue, WA 98004-8341
Tel: 425.462.4700
Fax: 425.451.0714
www.prklaw.com

RECEIVED

JUL 13 2016
DEPARTMENT OF
WATER RESOURCES

Gregory L. Russell
Attorney at Law
425.990.4047
grussell@prklaw.com

June 7, 2016

To Whom It May Concern:

Re: **Black Butte Hills LLC**

Dear Sir or Madam:

The purpose of this letter is to provide you with the information that you need to verify Greg Vik's authority to act on behalf of Black Butte Hills LLC, a Washington limited liability company.

I am the attorney for Black Butte Hills LLC. I have reviewed its operating agreement and related documents. It is an active company.

Mr. Vik is the President of Investments Manager LLC, which is the Manager of Black Butte Hills LLC. He has full authority to act on its behalf on all matters, including the purchase, sale and lease of real property, and transactions of any and all other kind. Mr. Vik should sign documents as "President of Investments Manager, LLC, Manager of Black Butte Hills LLC."

If you have any questions or need further information, please do not hesitate to contact me.

Very truly yours,

PETERSON RUSSELL KELLY PLLC



Gregory L. Russell

GLR:lal

cc: Greg Vik, Black Butte Hills LLC

No. W 36007	Due no later than Jan 31, 2016 Annual Report Form	2. Registered Agent and Address (NO PO BOX)	
Return to: SECRETARY OF STATE 700 WEST JEFFERSON PO BOX 83720 BOISE, ID 83720-0080 NO FILING FEE IF RECEIVED BY DUE DATE		NATIONAL REGISTERED AGENTS INC 921 S ORCHARD ST STE G BOISE ID 83705 3. <u>New</u> Registered Agent Signature:*	
4. Limited Liability Companies: Enter Names and Addresses of at least one Member or Manager.			
Office Held	Name	Street or PO Address	City State Country Postal Code
MANAGER	INVESTMENTS MANAGER LLC	10900 NE 4TH STREET SUITE 1850	BELLEVUE WA 98004-8341
5. Organized Under the Laws of: WA W 36007		6. Annual Report must be signed.* Signature: Peterson Russell Kelly PLLC Name (type or print): Peterson Russell Kelly PLLC Date: 01/12/2016 Title: Attorney for LLC	
Processed 01/12/2016		* Electronically provided signatures are accepted as original signatures.	

WATER SUPPLY BANK LEASE CONTRACT

RECEIVED

NOV 09 2015

DEPARTMENT OF
WATER RESOURCES

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

Lessor: BLACK BUTTE HILLS LLC
PO BOX 1607
BELLEVUE WA 98009
425-460-2542

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 on August 13, 2015 to lease water rights described below into the Water Supply Bank on forms supplied by the Idaho Department of Water Resources.
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

<u>Water Right</u>	<u>Lease Rate</u>	<u>Lease Volume</u>	<u>Acre Limit</u>	<u>Total Leased Acres</u>
37-22771	4.49 CFS	1113.9 AF	NA	371.3 AC
Combined Lease Totals:	4.49 CFS	1113.9 AF	NA	371.3 AC

The water rights described herein shall be available for rental from the Bank as follows:
Authorized Period of Use under Lease: May 1 to October 1

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: NOT RENTABLE

3. **TERM OF LEASE:** This Lease shall take effect when both parties have signed it and shall continue in effect until December 31, 2015.
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.

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

BLACK BUTTE HILLS LLC
PO BOX 1607
BELLEVUE WA 98009

By 
Printed Name GREG VIK

Date 11-6-15
Title PRESIDENT

IDAHO WATER RESOURCE BOARD
322 East Front Street
P.O. Box 83720
Boise, ID 83720-9098

By 
Brian Patton, Acting Administrator
Idaho Water Resource Board

Date 11/9/2015

Lease approved by IDWR 

Date 11-9-2015

ATTACHMENT A
WATER RIGHT NO. 37-22771
WATER SUPPLY BANK CONDITIONS OF ACCEPTANCE

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

Lessor: BLACK BUTTE HILLS LLC
 PO BOX 1607
 BELLEVUE WA 98009
 425-460-2542

Priority Date: 10/30/1974

Source: GROUND WATER

<u>BENEFICIAL USE</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
IRRIGATION	05/01	to 10/01	4.49 CFS	1113.9 AF
	Total:		4.49 CFS	1113.9 AF

LOCATION OF POINT(S) OF DIVERSION:

GROUND WATER	SW¼NW¼	Sec. 01, Twp 02S, Rge 17E, BLAINE County
GROUND WATER	SW¼SE¼	Sec. 11, Twp 02S, Rge 17E, CAMAS County

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	
02S	17E	1							6.2			1.1	5.9						13.2
02S	17E	2				0.4								13.4	1.0	1.1	33.2	3.8	52.9
02S	17E	11	25.5	34.0	28.0	17.7	31.9			15.0					16.3	12.0	19.0	27.0	226.4
02S	17E	12								0.8	14.7	24.3	28.0	11.0					78.8

Total Acres: 371.3

ADDITIONAL CONDITIONS OF ACCEPTANCE

1. The water rights referenced above will not be rentable from the bank.
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, the lease term expires, or upon request from the lessor to change the term of the lease, 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.
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.
 - b. If a change in ownership is processed by the Department during a rental season, rental payment will be made to the person or entity who is the lessor of record at the beginning of that rental season.
 - c. New lessor(s) of record will receive payment after the following rental season.
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. Use of water under this right will be regulated by a watermaster with responsibility of 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.
13. Water rights 37-2211, 37-11989 and the unleased portion of water right 37-22771 when combined shall not exceed the irrigation of 377.2 acres.
14. This right when combined with all other rights shall provide no more than 0.02 cfs per acre or more than 3.5 afa per acre at the field headgate for irrigation of the place of use.
15. The period of use for the irrigation described in this approval may be extended to a beginning date of 4/15 and an ending date of 10/31 provided that beneficial use of the water can be shown and other elements of the right are not exceeded. The use of water before 5/1 and after 10/1 is subordinate to all water right having no subordinated early or late irrigation use and a priority date earlier than the date of the decree on February 3, 2010.