

WATER SUPPLY BANK LEASE CONTRACT

RECEIVED

AUG 04 2016

DEPARTMENT OF
WATER RESOURCES

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

LESSOR: WILLIAMS MARKELL PROPERTIES LLLP
PO BOX 1967
KETCHUM ID 83340
530-713-3623

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 June 14, 2016, the Lessor filed an application to lease the water rights 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 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	Priority Date	Source	Tributary	Leased Rate	Annual Leased Volume	Total Leased Acres
37-21180	03/29/1877	SILVER CREEK	LITTLE WOOD RIVER	0.035 cfs	14.0 af	4.0 ac
37-21182	11/01/1885	SILVER CREEK	LITTLE WOOD RIVER	0.001 cfs	14.0 af	4.0 ac
37-21184	04/01/1888	SILVER CREEK	LITTLE WOOD RIVER	0.02 cfs	14.0 af	4.0 ac
37-21186	06/30/1895	SILVER CREEK	LITTLE WOOD RIVER	0.03 cfs	14.0 af	4.0 ac
Total annual combined limits of these water rights				0.86 cfs	14.0 af	4.0 ac

SUPPORT DATA

Lease Totals

0.08 cfs 14.0 af 4.0 ac

IN FILE # 37-21180

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.

RECEIVED

AUG 04 2016

DEPARTMENT OF
WATER RESOURCES

WATER SUPPLY BANK LEASE CONTRACT

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.

WILLIAMS MARKELL PROPERTIES LLLP
PO BOX 1967
KETCHUM ID 83340

By [Signature]

Date 8.3.16

Printed Name MARK S WILLIAMS

Title GENERAL/MANAGING PARTNER

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

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

Date 8/5/2016

Lease approved by IDWR [Signature]

Date 8-5-2016

ATTACHMENT A

WATER SUPPLY BANK CONDITIONS OF ACCEPTANCE

WATER RIGHT NOS. 37-21180, 37-21182,
37-21184, and 37-21186

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

Lessor: WILLIAMS MARKELL PROPERTIES LLLP
PO BOX 1967
KETCHUM ID 83340
530-713-3623

Location of Point(s) of Diversion for Water Right 37-21180, 37-21182, 37-21184, 37-21186

SILVER CREEK	NENESW	Sec. 36, Twp 01S, Rge 20E, BLAINE County
SILVER CREEK	SWSESW	Sec. 36, Twp 01S, Rge 20E, BLAINE County
SILVER CREEK	NESESW	Sec. 36, Twp 01S, Rge 20E, BLAINE County

<u>Water Right</u>	<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
37-21180	IRRIGATION	04/15 to 10/31		0.035 cfs	14.0 af
37-21182	IRRIGATION	04/15 to 10/31		0.001 cfs	14.0 af
37-21184	IRRIGATION	04/15 to 10/31		0.02 cfs	14.0 af
37-21186	IRRIGATION	04/15 to 10/31		0.03 cfs	14.0 af
Total:				0.08 cfs	14.0 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	
														3.7			0.3		4.0

Total Acres: 4.0

Conditions Applicable to All Leased Water Rights

- The water rights referenced above will be rented from the bank at the current rental rate.
- 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.
- 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.
- 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.
- While a water right is in the bank, forfeiture provisions are stayed pursuant to Idaho Code § 42-223(5).
- Rental of water under this right is subject to the limitations and conditions of approval of the water right.
- 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 rights leased to the bank are 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 is regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 37.
13. When combined with all other rights, the leased rights shall provide not more than 0.02 cfs per acre.
14. Pursuant to a call in time of scarcity, water right 37-21180 is senior to all other rights that did not result from saved or developed water in Silver Creek, as established, controlled by and subject to the provisions of the Brett v. Chapman decree (Lincoln County Case No. 2816, entered December 28, 1932).
15. Water from water right 37-21180 resulted from developed water in Silver Creek.

Idaho Water Resource Board
Water Supply Bank Lease

37-21180, 37-21182, 37-21184 and 37-21186
Effective until December 31, 2020

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



0 500 1,000 Feet

STATE OF IDAHO
WATER RESOURCE BOARD

RECEIVED

JUN 14 2016

DEPARTMENT OF
WATER RESOURCES

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

Designated Applicant Williams/Markell Properties

(Select one owner – see item 1A on the application)

Water Right No. 37-21182

(One water right per application)

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

Yes ☐ No ☒

This application must be prepared in accordance with the minimum requirement checklist below. Use this checklist to ensure all necessary documentation has been provided. This checklist is part of the lease application and must be included with the lease application. **Applications that do not meet the minimum requirements will not be processed and may be returned or denied.**

MINIMUM REQUIREMENT CHECKLIST

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

Yes

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

Attachment N/A Yes

- | | | | |
|----|-------------------------------------|-------------------------------------|--|
| 1A | ☒ | ☐ | Signatures and contact information for all owners of the water right to be leased or sold on this application. |
| 1B | ☐ | ☒ | An <u>Internal Revenue Service (IRS) Form W-9</u> for the Designated Applicant. |
| 1C | ☒ | ☐ | <i>Notice of Change in Water Right Ownership</i> form (accessible from www.idwr.idaho.gov). |
| 1D | ☐ | ☒ | Contact information for an authorized representative and documentary proof they are authorized to represent the Designated Applicant on this application. If the Designated Applicant is a business, partnership, municipality, organization or association, include documents identifying officers authorized to sign or act on behalf of the entity. |
| 2 | ☐ | ☒ | Description of a water right portion offered to the Water Supply Bank. |
| 3 | ☐ | ☒ | A map that clearly outlines the specific location where irrigated acres will be dried up, or where a beneficial use of water will be suspended. You have the option of printing a map using the map tool on IDWR's website at: www.idwr.idaho.gov . |
| 4A | ☒ | ☐ | Written consent from irrigation district or water delivery company. |
| 4G | ☒ | ☐ | Evidence demonstrating the water right has not been forfeited pursuant to <u>Section 42-222(2), Idaho Code</u> . |

Department Use Only

Fee Amount \$ 500.00Received By: AODate Received: 6-14-16Receipt # C102158W-9 received? Yes ☒ No ☐ (Route W-9 to Fiscal)Name on W-9: Williams/Markell Properties

STATE OF IDAHO
WATER RESOURCE BOARD

APPLICATION TO SELL OR LEASE A WATER RIGHT
(Continued)

1. CONTACT INFORMATION

- A. This application must be completed by a Designated Applicant who is a current owner of the water right being sold or leased to the Water Supply Bank. If there are additional current owners, those individuals must authorize the Designated Applicant to represent them on this application by completing and signing Attachment 1A of this application package.

Designated Applicant Williams/Markell Properties LLLP

Mailing Address <u>PO Box 1967</u>	<u>Ketchum</u>	ID	<u>83340</u>
Street	City	State	Zip Code
Email Address <u>mswncity@mac.com</u>	Phone Number	<u>(530) 713-3623</u>	

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

OR

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

- B. Has the Designated Applicant submitted an IRS Form W-9 to this Department within the last 2 years? Yes ☒ No ☐

If no, complete the form and attach to this application (Attachment 1B).

- C. Are all applicants on this form listed in IDWR's records as the current owners of the water right? Yes ☒ No ☐

If no, attach a *Notice of Change in Water Right Ownership* form along with the required documentation and fee (Attachment 1C).

- D. Is this application being completed by an authorized representative of the Designated Applicant? Yes ☒ No ☐

If yes, representatives (includes employees of Designated Applicant companies) must complete this section and submit documentary proof of their authority to represent the Designated Applicant (Attachment 1D).

Name of Representative James P. Speck Organization Speck & Aanestad, A Professional Corp.

Professional Title attorney Email Address jim@speckandaanestad.com

Mailing Address PO Box 987, Ketchum, ID, 83340 Phone Number 208-726-4421

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

OR

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

2. DESCRIPTION OF WATER RIGHT OFFERED TO THE BANK

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

OR

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

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

3. MAP

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

STATE OF IDAHO
WATER RESOURCE BOARD

APPLICATION TO SELL OR LEASE A WATER RIGHT
(Continued)

4. GENERAL INFORMATION

- A. Is the diversion works or system owned or managed by an irrigation district or water delivery company? Yes ☐ No ☒
If yes, provide written consent from the company, corporation or irrigation district authorizing the proposed sale or lease (Attachment 4A).

If your water right is delivered through a canal, lateral or ditch operated by a canal company, irrigation district, or similar delivery entity, your lease request must include written consent from the company, district, or similar entity for your removal of water from its system pursuant to Section 42-108, Idaho Code and IDAPA WSB Rule 37.02.03.25.02e.

- B. Please provide a description of the current water diversion and delivery system.

Pump from Silver Creek, mainline, pivot sprinkler irrigation system

- C. Describe any other water rights used for the same purpose at the same place of use as the water right being offered to the Bank. 37-21180, 37-21184 & 37-21186

- D. Are any of the water rights identified in Section 4C stacked with the water right proposed for lease? Yes ☒ No ☐

Stacked water rights are used together to achieve a common beneficial use, such as irrigation of the same lands. Stacked water rights cannot be separated and must be jointly leased to the Water Supply Bank. Stacked water rights qualify for the multiple fee payment of \$500.

- E. Will the present place of use continue to receive water from any other source? Yes ☐ No ☒

If yes, explain the relationship between the different water sources and how enlargement of the authorized use will not occur if this water right is leased.

- F. Identify annual volumes and/or rates of water diverted in the last 5 years to accomplish the beneficial use authorized by this water right. N/A - see G., below

- G. Has any portion of this water right undergone a period of five or more consecutive years of non-use? Yes ☐ No ☒

If yes, describe the circumstances and attach evidence to demonstrate how the water right has not been lost through forfeiture (Attachment 4G). See Section 42-223, Idaho Code for exceptions to forfeiture. Your application may be denied if forfeiture concerns are not addressed. Right decreed in Sept., 2010. Portion proposed for lease not used since then. This Application is filed before the end of the 6th calendar year of non-use which, per Administrator's Memorandum - Multiple Programs Memo No. 2, dated March 5, 2012, "will prevent a finding of forfeiture by the Department."

- H. Is this water right involved in any other IDWR process, such as an application for transfer or a mitigation plan?

If yes, describe.

Yes ☐ No ☒

STATE OF IDAHO
WATER RESOURCE BOARD

APPLICATION TO SELL OR LEASE A WATER RIGHT
(Continued)

5. SALE/LEASE AGREEMENT

A. Is the water right, or portion thereof, offered to the Idaho Water Resource Board (IWRB) for sale ☐ or lease ☒.

If lease, specify the years when the use of water will be suspended: 2016 to 2020 (maximum lease period 5 calendar years).
(Year) (Year)

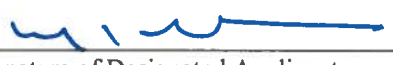
B. Show the minimum payment acceptable to the seller/lessor. The minimum payment may be shown as the "current rental rate" as established by the IWRB. Include the method of determining the minimum payment if other than the current rental rate.

Current rental rate

I hereby assert that the information contained in this application is true to the best of my knowledge, and that I have the authorities necessary to offer this water right for sale or lease to the Idaho Water Resource Board.

The Designated Applicant acknowledges the following:

1. Payment to the Designated Applicant is contingent upon the sale or rental of the water right from the Bank.
2. While a water right is in the Bank, the seller/lessor of the water right may not use the water right, even if the water right is not rented from the Bank.
3. A water right accepted into the Bank stays in the Bank until the Designated Applicant receives written confirmation from the Board or Water Supply Bank that the water right has been released from the Bank.
4. While a water right is in the Bank, forfeiture is stayed.
5. Acceptance of a water right into the Bank does not, in itself, confirm the validity of the water right or any element of the water right.


Signature of Designated Applicant

Mark S. Williams, General Partner

Printed Name

6.7.16
Date


Signature of Authorized Representative

Jane E. Williams, General Partner

Printed Name

6.7.16
Date

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



CERTIFICATE OF LIMITED PARTNERSHIP

(Instructions on back of application)

2014 OCT -7 PM 3: 32

SECRETARY OF STATE
STATE OF IDAHO

1. The name of the limited partnership:

Williams/Markell Properties LLLP

2. The mailing address of the principal office:

PO Box 1967, Ketchum, ID 83340

3. The name and business address of the registered agent:

D. John Thornton, 3101 W. Main St. Ste 200, Boise, ID 83702

4. The name and mailing address of each general partner:

Name

Address

Mark S. Williams

PO Box 1967, Ketchum, ID 83340

Jane E. Williams

PO Box 1967, Ketchum, ID 83340

(If more space is needed, continue in item 6.)

5. This limited partnership [☐ is not] [☒ is] a **limited liability** limited partnership.
(If you check that your partnership is a limited liability limited partnership, your partnership name must end in LLLP or Limited Liability Limited Partnership.)

6. Other matters (optional):

7. Signature of all general partners:

Mark S. Williams
Jane E. Williams

Mark S. Williams

Typed Name
Jane E. Williams

Typed Name

Typed Name

Typed Name

Secretary of State use only

IDAHO SECRETARY OF STATE

10/07/2014 05:00

CK:7665 CT:44531 BH:1444348

1@ 100.00 = 100.00 LTD PTR DM #2

g:\corp\forms\partnership of limited partnership.pmd Revised 08/2006

Web Form

L7045

**STATE OF IDAHO
WATER RESOURCE BOARD**

Complete Attachment 2 if only a portion of the water right is offered to the Bank.

ATTACHMENT 2

DESCRIPTION OF A WATER RIGHT PORTION OFFERED TO THE WATER SUPPLY BANK

1. <u>Water Right Number</u>	Nature of Use	Leased Rate (cfs)	Leased Volume (af)	Leased Acres (ac)
37-21182	irrigation	0.01		4.0
Total Amounts:		0.01		4.0

2. Source of water Silver Creek tributary to Little Wood River

3. Point(s) of diversion:

Twp	Rge	Sec	Lot	¼	¼	¼	County
1S	20E	36		NE	NE	SW	Blaine
1S	20E	36		NE	SE	SW	Blaine
1S	20E	36		SW	SE	SW	Blaine

WILLIAMS/MARKELL PROPERTIES LLLP

Parcel Information Map

APPLICATION TO LEASE WATER RIGHT TO WATER SUPPLY BANK

Parcel number/Owner Name/Address

