

WATER SUPPLY BANK LEASE CONTRACT

RECEIVED

JUL 20 2016

DEPARTMENT OF
WATER RESOURCES

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

LESSOR: BAYHORSE ROAD TRUST
210 BAYHORSE RD
PO BOX 662
BELLEVUE ID 83313
208-788-0005

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 May 2, 2016, 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
37-21965	6/22/1978	GROUND WATER	NA	0.06 cfs	16.5 af	5.5 ac

Lease Totals 0.06 cfs 16.5 af 5.5 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, 2016. 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.

BAYHORSE ROAD TRUST

210 BAYHORSE RD
PO BOX 662
BELLEVUE ID 83313

By



Printed Name

Frances C. MacDonell

Date

7/16/16

Title

Trustee

IDAHO WATER RESOURCE BOARD

322 EAST FRONT ST
PO BOX 83720
BOISE ID 83720-0098

By



Brian Patton, Acting Administrator
Idaho Water Resource Board

Date

7/20/2016

Lease approved by IDWR



Date

7-20-2016

ATTACHMENT A

WATER SUPPLY BANK CONDITIONS OF ACCEPTANCE

WATER RIGHT NO. 37-21965

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

Lessor: BAYHORSE ROAD TRUST
210 BAYHORSE RD
PO BOX 662
BELLEVUE ID 83313
208-788-0005

Location of Point(s) of Diversion for Water Right 37-21965

GROUND WATER L4(SWSW) Sec. 31, Twp 02N, Rge 19E, BLAINE County

<u>Water Right</u>	<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
37-21965	IRRIGATION	04/01	to 11/01	0.06 cfs	16.5 af
Total:				0.06 cfs	16.5 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	
02N	19E	31											5.5 L4						5.5

Total Acres: 5.5

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.
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 nor more than 3.5 afa per acre at the field headgate for irrigation of the lands above.
14. The unleased portion of this right is limited to 0.5 acres, 0.01 cfs and 1.5 af in a single irrigation season.

Idaho Water Resource Board
Water Supply Bank Lease

37-21965

Effective until December 31, 2016

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



0 250 500 Feet

STATE OF IDAHO
WATER RESOURCE BOARD

RECEIVED

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

MAY 02 2016

DEPARTMENT OF
WATER RESOURCESDesignated Applicant Frances C. MacDonald, Trustee

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

Water Right No. 37-21965

(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 Internal Revenue Service (IRS) Form W-9 for the Designated Applicant.
- 1C ☒ ☐ *Notice of Change in Water Right Ownership* form (accessible from www.idwr.idaho.gov).
- 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 [Section 42-222\(2\), Idaho Code](#).

Department Use Only

Fee Amount \$ 250.-Received By: ELBDate Received: 5/2/16Receipt # C101950W-9 received? Yes ☒ No ☐

(Route W-9 to Fiscal)

Name on W-9: FRANCES C MACDONALD

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 Frances C. MacDonald, Trustee of the Bayhorse Road Trust UDT March 7, 2005

Mailing Address 210 Bayhorse Road, PO Box 662, Bellevue, Idaho, 83313

Street City State Zip Code

Email Address bayhorse210@yahoo.com

Phone Number 208-788-0005

☒ 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, Idaho, 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.

There is none

- 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. None.

- 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. I/2A will continue to be irrigated by the well pursuant to IC 42-111(a)

- 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. None.

- 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.

- 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 2016 (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.
\$278/acre-foot or \$5000 for entire 6 acres and 18 acre-feet. Private lease
arrangements for ground water in the Ketchum zone have been for \$571/acre-foot
or more.

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

Frances C. MacDonald, Trustee

Printed Name

1/25/16

Date

Signature of Authorized Representative

Printed Name

Date

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

Instrument # 540901
HAILEY, BLAINE, IDAHO
2006-10-18 03:15:00 No. of Pages: 1
Recorded for : FRANCES MAC DONALD
MARSHA RIEMANN Fee: 3.00
Ex-Officio Recorder Deputy
Index to: WTYKOCORP DEED

WARRANTY DEED

FOR VALUE RECEIVED, and as consideration as part of an IRC Section tax-deferred exchange,
TRINITY EXCHANGE HOLDING NO. 5, L.L.C., a Georgia limited liability company
the grantor, does hereby grant, bargain, sell and convey unto

FRANCES C. MacDONALD, as Trustee of the Bayhorse Road Trust
Under Declaration of Trust dated March 7, 2005

the grantee, whose current address is: 210 Bayhorse Road *Box 662*
Bellevue, Idaho 83313

The following described premises, in BLAINE COUNTY, IDAHO, to wit:

Lot 21B of Muldoon Ranch Subdivision No. 2, Lots 21A and 21B Amended May
1980, Blaine County, Idaho, as shown on the official plat thereof, recorded August
13, 1980, as Instrument No. 205759, records of Blaine County, Idaho.

This transaction is part of a Section 1031 Exchange to convey the replacement property to grantee
herein.

Subject to: Taxes, easements, restrictions, reservations, assessments and encumbrances as shown of
record, if any.

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said grantee and her
heirs and assigns forever. And the said grantor does hereby covenant to and with the said grantee, that
it is the owner in fee simple of said premises; that said premises are free from all encumbrances and
they it will warrant and defend the same from all lawful claims whatsoever.

Dated: October 17, 2006

Trinity Exchange Holding No. 5, L.L.C.,
a Georgia limited liability company

By: 
John H. Haugaard, Manager

State of Georgia

County of DeKalb

On this 17th day of October, 2006, before me a Notary Public in and for said State, personally appeared
John H. Haugaard known or identified to me to be the person whose name is subscribed to the within
instrument, and acknowledged to me that he executed the same.


Notary Public
Decatur, DeKalb County, Georgia
Commission Expires: _____





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

July 21, 2016

BAYHORSE ROAD TRUST
210 BAYHORSE RD
PO BOX 662
BELLEVUE ID 83313

RE: WATER SUPPLY BANK LEASE CONTRACT(S) FOR WATER RIGHT(S) 37-21965

Dear Lessor:

Water right(s) 37-21965 was leased into the Water Supply Bank (Bank) as of January 1, 2016, in accordance with the enclosed executed lease contract(s). **Your water right(s), as described on the lease contract(s), 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(s) while leased can be found in conditions of acceptance of the lease contract. Read the conditions of acceptance carefully.

The right(s) will automatically be released from the Bank on **December 31, 2016**, 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,

for Water Supply Bank

Enclosure: Executed Lease Contract

c: Speck & Aanestad- email
IDWR Southern Region- email
Watermaster – Water District 37- email

SPECK & AANESTAD
A PROFESSIONAL CORPORATION
ATTORNEYS

JAMES P. SPECK
jim@speckandaanestad.com
DOUGLAS J. AANESTAD
doug@speckandaanestad.com

120 EAST AVENUE
POST OFFICE BOX 987
KETCHUM, IDAHO 83340

TELEPHONE
(208) 726-4421
FACSIMILE
(208) 726-0752

July 18, 2016

RECEIVED

JUL 20 2016

**DEPARTMENT OF
WATER RESOURCES**

Cherie Palmer
Sr. Water Resource Agent
Idaho Department of Water Resources
322 E. Front St.
P. O. Box 83720
Boise, Idaho 83720-0098

***Re: Frances MacDonald, Trustee of the Bayhorse Road Trust - Water Supply Bank
Lease Contract***

Dear Cherie:

Enclosed you will find the signed originals of the above-referenced Lease Contract. Please copy me on the letter returning the fully executed Lease Contract to my client.

If you have any questions, please contact me. Thank you.

Sincerely yours,

SPECK & AANESTAD
A Professional Corporation

By: _____


James P. Speck

Enclosures

cc: client w/encl.

Hersley, Jean

From: Jim Speck <jim@speckandaanestad.com>
Sent: Thursday, July 14, 2016 9:59 AM
To: Palmer, Cherie
Cc: Hersley, Jean
Subject: RE: RE: RE: MacDonald/Water Right 37-21965

Cherie,

My client will sign the Lease Contract and get it to me as soon as possible. Please confirm this will be acceptable. Thank you.

Jim

-----Original Message-----

From: Palmer, Cherie
Sent: Tuesday, July 12, 2016 10:29 AM
To: Jim Speck

Jim,

Sorry but, no. Our decision in allowing the Ridgeview lease in with part of it being non-rentable has been questioned by management. In the future we won't be allowing a lease into the bank with acres that can't be rented unless special circumstances exist. The MacDonald and Ridgeview leases shouldn't be situations where we'd bring acres into the bank as non-rentable.

Cherie

-----Original Message-----

From: Jim Speck [mailto:jim@speckandaanestad.com]
Sent: Tuesday, July 12, 2016 10:05 AM
To: Palmer, Cherie
Cc: Hersley, Jean
Subject: RE: RE: MacDonald/Water Right 37-21965

Cherie,

Are you willing to lease the entire 6A but restrict the rental to 5.5A? This would be similar to the Ridgeview lease.

Jim

-----Original Message-----

From: Palmer, Cherie
Sent: Thursday, July 07, 2016 4:29 PM
To: Jim Speck
Cc: Hersley, Jean

Jim,

Thank you for your email. The statute pertaining to leasing water rights into the Bank says:

42-1762. Rules and regulations -- Acquisition of water rights.

(2) The board may contract with lessors and lessees to act as an intermediary in facilitating the rental of water. The board may purchase, lease, or otherwise obtain decreed, licensed or permitted water rights to be credited to the water supply bank. The use to which the owner is entitled under the water right shall be reduced by the portion of the water right leased to the bank. The water rights may be retained in the water supply bank for a period as determined by the board, all under such provisions as are specified in the terms of the purchase or lease.

I draw your attention to the sentence that says "the use to which the owner is entitled under the water right shall be reduced by the portion of the water right leased to the bank."

It clearly sets forth that if you lease 6 acres, you must idle 6 acres. If you say a domestic exemption exists and is stacked with that 6 acre water right, it too must be accepted into the bank...thus avoiding enlargement. However, a domestic exemption cannot obviously be leased into the bank.

As defined in the Transfer Processing Policies and Procedures Memorandum (Transfer Processing No. 24, part 5d.3) water rights are "stacked" when two or more water rights, generally of different priorities and often from different sources, are used for the same use and overlie the same place of use. For example, rights may be stacked or overlapping if they have a common place of use or common diversion or common diversion volume. Similar to the transfer process, applicants are generally required to offer the corresponding portion of each of the stacked rights for lease to the Bank to avoid enlargement of the right through "unstacking" one or more of the water rights. Consequently, land irrigated with stacked water rights generally must be "dried up" for the duration of the lease period. Disclaimer: This explanation assumes that there is indeed a domestic exemption taking place at the water right place of use--which I am not confirming in this email.

At this point I am closing the MacDonald and Ridgeview leases for review. We have created contracts and have sent them to your clients (MacDonald sent 6/15 and Ridgeview sent 6/20). The contracts will not be modified in regard to the amount being leased. The bank is an elective program; therefore, the clients can sign the leases or not given our position on the matter. We will hold any action on these leases until next Friday, July 15.

Cherie

-----Original Message-----

From: Jim Speck [mailto:jim@speckandaanestad.com]
Sent: Thursday, July 07, 2016 3:28 PM
To: Palmer, Cherie
Cc: Hersley, Jean; Frances Mac Donald; Buyer, Remington
Subject: RE: MacDonald/Water Right 37-21965

Cherie,

I picked up your voice mail. I won't be available until Monday afternoon to discuss it. I need an explanation of how there can possibly be an enlargement caused by renting the entire 6A of this water right if there has NOT been a forfeiture of any portion of that right. Absent such a forfeiture it's a valid water right that can be used to irrigate 6A of land somewhere. One reason to lease it to the Bank is to allow my client time to figure out where it is to be used in its entirety. In addition, my client has the right under IC 42-111 to continue to use her domestic well to irrigate 0.5A of her lot.

Please provide me with some legal analysis that shows me how the lease/rental of all 6A of this right causes an enlargement in use of that right or any other right.

Thank you.

Jim

-----Original Message-----

From: Jim Speck [mailto:jim@speckandaanestad.com]

Sent: Wednesday, June 29, 2016 9:00 AM

To: 'Palmer, Cherie'

Cc: 'Hersley, Jean'; Frances Mac Donald (bayhorse210@yahoo.com); Remington Buyer (Remington.Buyer@idwr.idaho.gov)

Subject: RE: MacDonald/Water Right 37-21965

Cherie,

I agree in principle that leases should not result in an enlargement, but not in this situation. There is only an enlargement IF some portion of 37-21965 has been forfeited which is NOT the case. This right was both licensed and decreed for the irrigation of 6 acres. The construction of the home and drilling and use of the domestic well should not result in a reduction of that irrigation entitlement unless it causes a forfeiture. If the entire 6 acres is not leased to the Bank then IDWR is effectively forcing my client to not use the remaining 0.5 acre and thus subject it to forfeiture, or to use it to irrigate the 0.5A and not use the domestic exemption right for that purpose. That would mean my client has to install a flow meter to measure the diversions under 37-21965 and that 0.5 acre irrigation would be (theoretically) subject to potential curtailment, whereas the 0.5 acre irrigation by the domestic well would not be curtailed.

Please get back to me. Thank you.

Jim

-----Original Message-----

From: Palmer, Cherie

Sent: Tuesday, June 28, 2016 12:27 PM

To: Jim Speck

Cc: Hersley, Jean

Jim,

Jean forwarded your email regarding this lease in order to resolve the proposed lease for 37-21965 (1978 priority date).

Department policy is to avoid situations where an enlargement could occur.
In this case, this is my understanding:

Decreed water right: B/U is 6 acres of irrigation on a 6.1 acre lot.

However, the POU is partly covered by a home, driveway, and road.

Home and Drive (constructed 1985) = 0.1 acre

Road = 0.2 acres

Lawn = 0.5 acres

Conclusions:

- * Area covered by the home and driveway are not included in the water right's POU
- * Area covered by road is part of the POU; water is not forfeited at this time and can be leased into the bank
- * Amount available to lease without causing an enlargement if/when rented is 5.5 acres (6 acres - 0.5 acres for lawn)
- * If we allowed 6 acres into the bank, 6.5 acres would be irrigated if fully rented (6 acres to a renter and 0.5 acre of lawn)

I attached the bank's policy that may be of interest. If you have any further questions Jim, you may call me or Remington. We'll hold further action such as returning the lease unprocessed until 7/6/16.

Cherie Palmer, Water Rights Supervisor
Idaho Dept of Water Resources
Water Allocation Bureau
322 E. Front Street (Front St. & Broadway Ave)
Mail: PO BOX 83720 Boise, ID 83720-0098
email: cherie.palmer@idwr.idaho.gov
phone: (208) 287-4944
fax: (208) 287-6700

-----Original Message-----

From: Jim Speck [<mailto:jim@speckandaanestad.com>]

Sent: Tuesday, June 21, 2016 9:25 AM

To: Hersley, Jean
<Jean.Hersley@idwr.idaho.gov>

Cc: Frances Mac Donald <bayhorse210@yahoo.com>

Subject: Re: MacDonald/Water Right 37-21965

Jean,

I received the attached from you yesterday. Please explain how leasing all 6A would be an "enlargement". Attached is a copy of the map from the Beneficial Use Field Report for the exam done in Sept. 1985. It shows NO improvements on the lot and irrigation of 6A. The right was not licensed until 1989 AFTER the claim was filed in the SRBA. It was decreed in September 2010, so forfeiture is NOT an issue. The 1/2 acre presently irrigated is by a domestic well. I believe the entire 6A should be accepted into the Bank.

Jim

James P. Speck

SPECK & AANESTAD

A Professional Corporation

120 East Avenue North

P.O. Box 987

Ketchum, ID 83340

208.726.4421

208.726.0752 (fax)

jim@speckandaanestad.com<mailto:jim@speckandaanestad.com>

CONFIDENTIAL COMMUNICATION

This email message and any attachments are intended only for the use of the addressee named above and may contain information that is privileged and confidential. If you are not the intended recipient, any dissemination, distribution, or copying is strictly prohibited. If you received this email message in error, please immediately notify the sender by replying to this email message or by telephone. Thank you.

Attachment(s): WSB Domestic Language.docx

Hersley, Jean

From: Kevin Lakey <watermanager@cableone.net>
Sent: Monday, June 20, 2016 10:05 AM
To: Hersley, Jean
Subject: RE: WSB Lease Application for Bayhorse Road Trust 37-21965

I have no concerns with this application.

Kevin Lakey
Water District 37

From: Hersley, Jean [mailto:Jean.Hersley@idwr.idaho.gov]
Sent: Wednesday, June 15, 2016 8:35 AM
To: Merritt, Allen; Kevin Lakey
Cc: Skinner, Corey
Subject: WSB Lease Application for Bayhorse Road Trust 37-21965

Attached are the review memo, map and contract. Please let me know if you have any comments or concerns.

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

Hersley, Jean

From: Skinner, Corey
Sent: Friday, June 17, 2016 4:42 PM
To: Hersley, Jean
Subject: RE: WSB Lease Application for Bayhorse Road Trust 37-21965

No issues from me.

From: Hersley, Jean
Sent: Wednesday, June 15, 2016 8:35 AM
To: Merritt, Allen; Kevin Lakey
Cc: Skinner, Corey
Subject: WSB Lease Application for Bayhorse Road Trust 37-21965

Attached are the review memo, map and contract. Please let me know if you have any comments or concerns.

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

Hersley, Jean

From: Merritt, Allen
Sent: Wednesday, June 15, 2016 9:31 AM
To: Hersley, Jean
Subject: RE: WSB Lease Application for Bayhorse Road Trust 37-21965

I do not have an issue as reviewed. The issue with domestic exemption has been identified.

From: Hersley, Jean
Sent: Wednesday, June 15, 2016 8:35 AM
To: Merritt, Allen; Kevin Lakey
Cc: Skinner, Corey
Subject: WSB Lease Application for Bayhorse Road Trust 37-21965

Attached are the review memo, map and contract. Please let me know if you have any comments or concerns.

*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

June 15, 2016

BAYHORSE ROAD TRUST
210 BAYHORSE RD
PO BOX 662
BELLEVUE ID 83313

RE: APPLICATIONS TO LEASE WATER RIGHT 37-21965 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.

Please note the Bank only accepted 5.5 acres of water right 37-21965 into the Bank. Leasing all 6 acres would cause an enlargement if this right was rented. It doesn't appear the point of diversion is located on property owned by Bayhorse Road Trust. If Bayhorse Road Trust has a well located on property in Muldoon Ranch Sub #2, Lot 21B, you may need to file an Application for Transfer to update your point of diversion.

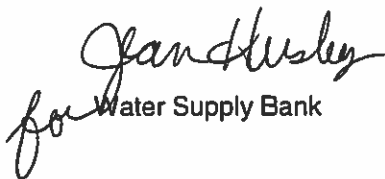
The right will automatically be released from the Bank on **December 31, 2016**, unless the right is released earlier by the Board, or upon your request. To release the right from the Bank prior to the release date, submit a written request on the Request to Release a Water Right from the Bank form. 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,


for Water Supply Bank

Enclosure: Proposed Lease Contracts

c: Speck & Aanestad

Hersley, Jean

From: Hersley, Jean
Sent: Wednesday, June 15, 2016 8:36 AM
To: Merritt, Allen; 'Kevin Lakey'
Cc: Skinner, Corey
Subject: WSB Lease Application for Bayhorse Road Trust 37-21965
Attachments: Idled Acres.pdf; Lease Application Review Checklist.xls; Lease Contract 37-21965.docx

Attached are the review memo, map and contract. Please let me know if you have any comments or concerns.

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

WATER SUPPLY BANK
Agent Lease Review Checklist
Applicant(s) Name: Bayhorse Road Trust

Memo Date: June 14, 2016

Water Right Number(s): 37-21965

Reviewers Name: Jean

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)			
	Portion of right			
	All of right	x		
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		
5	Authority to file			
	Current owner or designated applicant	x		
	SOS Web site checked for business entity			
	Other (explain in comments)			
6	Water Right validity			
	Decreed/Licensed/Statutory claim date (write in comments section)			
	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	
7	Injury to other water rights			
	If the POD is through a delivery entity, was consent provided?			ground water
	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		0.5 acres from well-domestic exemptio
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?	x		
	Send the watermaster comment request form or e-mail request	x		
11	Area Headgate requirement			3.5
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 applicant wishes to place the entire right in the Bank. The water right is for 6 acres, 0.07 cfs and 18.0 af. The applicant wants to continue watering the 1/2 acre around the home pursuant to Idaho Code 42-111(a). However, if 6 acres is placed in the Bank are rented and the applicant continues watering 1/2 acre, this would cause an enlargement (there would be 6.5 acres being irrigated. The applicant hasn't invoked the irrigation portion of their domestic exemption. Historically, the domestic exemption for them has been just in-house use. The Department will place 5.5 acres in the Bank. This water right was decreed in 2010. Forfeiture is not an issue. there are no overlapping water rights. This water right is currently within WD 37.			

Idaho Department of Water Resources

WMIS

Water Management Information System



Quick Search:

[For assistance,
email WMIS Info](#)

Search Method:

WMIS Number



WMIS Number

1001133

Search

You are logged in as Guest

[Point Of Diversion](#) [PCC](#) [Flow Meter](#) [Time Clock](#) [Alternate](#) [Contacts](#) [Data Summary](#) [Other](#)
[Logout](#)

Point Of Diversion

You are viewing 1001133; A0019425

WMIS Number	1001133	Network Well	No
Reporting District	Water District 37	Access Power	No
Measurement Option	Waived (5)	Water District	37
Metal Tag Number	A0019425	Tag Location	Corral post west of well head
Followup Date		Comments	Water is currently not being used. Sent owner Frances McDonald an application for the State Water Supply Bank. Klakey 11 23 2015. This WMIS is also shared by William Ratliff who has a meter installed. Entered Flow meter usage is for Ratliff.
Diversion Name			WMIS point needs added for Ratliff

[Search Water Rights](#)[Contacts](#) [PLSS](#) [Spatial Data](#) [Water Source](#) [Water Rights](#)

Water Right Number	Owner Type	Owner Name	Address	Phone	City/State/Zip	Email
37-21965	Current Owner	BAYHORSE ROAD TRUST	210 BAYHORSE RD PO BOX 662	(208) 578-7942	BELLEVUE, ID 83313	

USE ADDITIONAL SHEETS IF NECESSARY - FORWARD THE WHITE COPY TO THE DEPARTMENT

Webster, Clay

From: Jim Speck [jim@speckandaanestad.com]
Sent: Tuesday, June 07, 2016 2:40 PM
To: Webster, Clay; Buyer, Remington
Cc: 'Frances Mac Donald'
Subject: RE: RE: Lease Rental Rates for Frances C. MacDonald Trustee of the Bayhorse Road Trust UDT 37-21965

Remington,

Due to my client's travel schedule we were not able to discuss this until today. Ms. MacDonald is willing to accept the current rental rate if any of her water right leased to the bank is rented. Therefore, please proceed to complete the processing of her lease application with this change and reply to confirm that will be done.

Thank you.

Jim

-----Original Message-----

From: Buyer, Remington
Sent: Monday, May 09, 2016 2:40 PM
To: 'Jim Speck'; Webster, Clay
Cc: Frances Mac Donald

Jim,

You will recall from our recent conversation that the Idaho Water Resource Board has directed the Water Supply Bank to accept water rights for lease, and to rent them from the Bank at the current rental rate. The Board established this policy via resolution, based on Water Supply Bank rule 25.06.d (IDAPA 37.02.03). The Board is however interested to learn from water users who lease water rights to the Bank regarding what alternative rental rates would be desirable. The Board will consider alternative rental rates as part of a larger discussion about Water Supply Bank financing when the Water Supply Bank Sub-Committee of the IWRB convenes a meeting later this year.

Hence, during our recent conversation, I advised that you may request an alternative rental rate, since this information will be useful for the IWRB to know, but I advised that the Bank may not authorize an alternative rental rate until directed to do so by the Board. If you would like to request that these water rights not be leased into the Bank at the current rental rate, please confirm the same by responding to this email and requesting that these lease applications be returned.

Thanks,

Remington Buyer
Water Supply Bank Coordinator
Idaho Department of Water Resources
322 East Front Street, Boise, ID, 83720
T: (208) 287-4918 | F: (208) 287-6700

-----Original Message-----

From: Jim Speck [mailto:jim@speckandaanestad.com]
Sent: Monday, May 09, 2016 12:10 PM
To: Webster, Clay

Cc: Buyer, Remington; Frances Mac Donald
Subject: RE: Lease Rental Rates for Frances C. MacDonald Trustee of the Bayhorse Road Trust
UDT 37-21965

Clay,

I discussed the rent issue with Remington before I filed the lease application and he said to go ahead and send it in with the higher minimum rent request. In this case there isn't a separate agreement with a renter as we were not able to reach an agreement with a third party on the rent amount. We do not want to file the lease and then have that third party turn around and rent it at the Bank's set rate. If the Bank's policy is to not even consider a different minimum rent proposal I believe Remington would have told me that was the case. Please discuss it with him and get back to me.

Thank you.

Jim

-----Original Message-----

From: Webster, Clay
Sent: Monday, May 09, 2016 9:45 AM
To: Jim Speck

Jim,

The department received a lease application from you requesting a rental rate of \$278.00 per acre feet. Unfortunately, we are unable to accommodate any variance to the current rental rate unless there is an agreement made between a lessor and lessee (renter). Although the lease application was identified as a lease rental package, The department has not received a rental application to accompany this lease. I have attached the Idaho Water Resource Board Resolution addressing this issue. Can you verify that your client wishes to proceed with the lease at the current rental rate? Thank you.

Sincerely,
Clay Webster
Water Resource Agent
clay.webster@idwr.idaho.gov<<mailto:clay.webster@idwr.idaho.gov>>
208-287-4910
Idaho Department of Water Resources (IDWR)
322 E. Front Street
P.O. Box 83720
Boise, ID 83720-0098
208-287-4800
www.idwr.idaho.gov<<http://www.idwr.idaho.gov>>

Attachment(s): 3-12 WATER SUPPLY BANK RENTAL RATE CHANGE.pdf

SPECK & AANESTAD
A PROFESSIONAL CORPORATION
ATTORNEYS

JAMES P. SPECK
jim@speckandaanestad.com
DOUGLAS J. AANESTAD
doug@speckandaanestad.com

120 EAST AVENUE
POST OFFICE BOX 987
KETCHUM, IDAHO 83340

TELEPHONE
(208) 726-4421
FACSIMILE
(208) 726-0752

RECEIVED

April 27, 2016

MAY 02 2016

DEPARTMENT OF
WATER RESOURCES

Remington Buyer
Water Supply Bank Coordinator
Idaho Department of Water Resources
322 E. Front St.
Boise, Idaho 83720-0098

***Re: Frances C. MacDonald, Trustee of the Bayhorse Road Trust UDT March 7, 2005 -
Water Right 37-21965***

Dear Remington:

Enclosed you will find the original and a copy of an Applications To Sell or Lease a Water Right to the Water Supply Bank for Water Right No. 37-21965 together with my firm's check payable to the Department for the \$250 filing fee. As we discussed, this Application requests a minimum rental payment higher than the "current rental rate" established by the Board. As noted, it is based on several private lease arrangements in the Ketchum area that I have worked on. However, the specific terms and conditions of those agreements are confidential. I am only authorized to make the statement set forth in this Application.

Please have your staff receipt date-stamp the copy of this Application and return it to me in the postage prepaid self-addressed envelope I have included for that purpose. Contact me right away if you have any questions, comments or concerns about this Application.

Thank you.

Sincerely yours,

SPECK & AANESTAD
A Professional Corporation

By: 
James P. Speck

Enclosures
cc: Client w/encl.