



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098

Phone: (208) 287-4800 • Fax: (208) 287-6700 • Website: www.idwr.idaho.gov

C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

January 6, 2017

BEHREND BEHREND & KNITTEL
FARMS
PO BOX 815
ABERDEEN ID 83210

RE: Expiration of Water Supply Bank Rental Agreement for water rights: 35-2553A, 35-2713,
~~37-7169, 37-7373, 35-10422, 35-14258, 35-14260, 35-14262~~
~~35 35~~

Renter,

This letter is to inform you that your rental agreement(s) to rent the above listed water rights from the Water Supply Bank (Bank) expired at the end of 2016.

Once the rental agreement concludes, any diversion or use of water under the rental agreement will no longer be authorized and, if occurring, may be subject to an enforcement action.

If you wish to rent water in the future, please download a rental application from:
<http://idwr.idaho.gov>. You may submit rental applications on November 1 of the year prior to the intended use of rental water. **YOU ARE ENCOURAGED TO FILE AN APPLICATION AT LEAST 3 MONTHS PRIOR TO THE DATE YOU DESIRE TO USE RENTAL WATER.**

If you have any questions about this matter, please contact me at (208) 287-4918.

Sincerely,

Remington Buyer
Water Supply Bank Coordinator

Enclosures:

RECEIVED

MAR 21 2016

DEPARTMENT OF
WATER RESOURCESSTATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

WATER SUPPLY BANK RENTAL AGREEMENT

This is to certify that: BEHREND BEHREND AND KNITTEL FARMS
PO BOX 815
ABERDEEN ID 83210
(208)221-0342

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

Summary of Water Rights or Portions Rented from the Bank

Water Right	Priority Date	Source	Tributary	Rented Rate	Annual Rented Volume	Acre Limit	Total Rented Acres
35-2553A	1/8/1959	GROUND WATER	NA	0.74 cfs	152.4 af	NA	38.1 ac
35-2713	5/10/1962	GROUND WATER	NA	0.74 cfs	174.4 af	NA	43.6 ac
35-14260	10/1/1953	GROUND WATER	NA	0.39 cfs	88.0 af	22.0 ac	43.4 ac
35-14262	1/8/1959	GROUND WATER	NA	0.07 cfs	14.0 af	3.5 ac	43.4 ac
35-14258	1/18/1974	GROUND WATER	NA	0.40 cfs	159.6 af	39.9 ac	43.4 ac
Total Annual Combined Limit				0.86 cfs	173.6 af	43.4 ac	43.4 ac
35-7169	3/9/1971	GROUND WATER	NA	0.73 cfs	152.6 af	NA	38.2 ac
35-7373	1/18/1974	GROUND WATER	NA	0.22 cfs	44.2 af	NA	11.1 ac
35-10422	7/31/1987	GROUND WATER	NA	0.06 cfs	15.6 af	NA	3.9 ac
Total Annual Combined Limit				0.78 cfs	212.4 af	NA	53.1 ac

Annual Combined Rental Totals 3.12 cfs 712.8 af NA 178.2 ac

Term of Rental: This rental is in effect from the day the Idaho Water Resource Board signs the rental agreement and shall be in effect until December 31, 2016.

Rental Fee: \$12,117.60

The fee for rental of the above-described water is \$12,117.60 per year. Ten percent (\$1,211.76) will be retained by the Department to offset administrative costs, and the remainder will be paid to the lessor(s).

No rental fees will be refunded once the fee is collected and the start date for a Rental Agreement has passed.

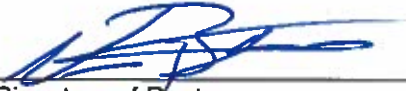
Detailed water right conditions are attached.

SUPPORT DATA

IN FILE # 35-2553A

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

The undersigned renter agrees to use the water rented under this agreement in accordance with the Water Supply Bank rules and in compliance with the limitations and conditions of use described in this agreement:



Signature of Renter

Nic Behrend - Owner

Printed Name and Title*

3-14-16

Date

Signature of Renter

Printed Name and Title*

Date

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

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

By 

BRIAN PATTON, Acting Administrator
Idaho Water Resource Board

Date 3/22/2016

Rental Approved by IDWR 

Date 3-22-2016

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

WATER USE DETAILS

LOCATION OF POINT(S) OF DIVERSION

GROUND WATER

SESWSE

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

BENEFICIAL USE

IRRIGATION

SEASON OF USE

04/01 TO 10/31

RENTER'S PLACE OF USE:

IRRIGATION

Twp	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
05S	R31E	6									30	30	30	30					120.0
05S	R31E	7					28.2	30											58.2

Total Acres: 178.2

CONDITIONS APPLICABLE TO ALL RENTED WATER RIGHTS

1. The use of water under this agreement shall be subject to the provisions of Idaho Code § 42-1766.
2. Rental of the specified right from the bank does not, in itself, confirm the validity of the right or any elements of the water right, or improve the status of the right including the notion of resumption of use. It does not preclude the opportunity for review of the validity of this water right in
3. Use of water under this agreement does not constitute a dedication of the water to renter's place of use, and upon expiration of this agreement, the points of diversion and place of use of the water shall revert to those authorized under the water right and/or again be available to rent from the bank.
4. This rental does not grant any right-of-way or easement to use the diversion works or conveyance works of another party.
5. Use of water under this agreement shall not prejudice any action of the Department in its consideration of an application for transfer or permit filed by the applicant for this same use.
6. Renter agrees to comply with all applicable state and federal laws while using water under this agreement.
7. Renter agrees to hold the Board, the Director and the state of Idaho harmless from all liability on account of negligent acts of the renter while using water.
8. Renter acknowledges and agrees that the Director may terminate diversion of water if the Director determines there is not a sufficient water supply for the priority of the right or portion thereof being rented.
9. Failure of the renter to comply with the conditions of this agreement is cause for the Director to rescind approval of the rental agreement.
10. Prior to the diversion and use of water under this rental agreement, the right holder shall install and maintain acceptable measuring device(s) at the authorized point(s) of diversion in accordance with Department specifications, or shall obtain an approved variance from the Department to determine the amount of water diverted from power records or to maintain an existing measuring device.
11. This rental agreement does not authorize the construction of a well.

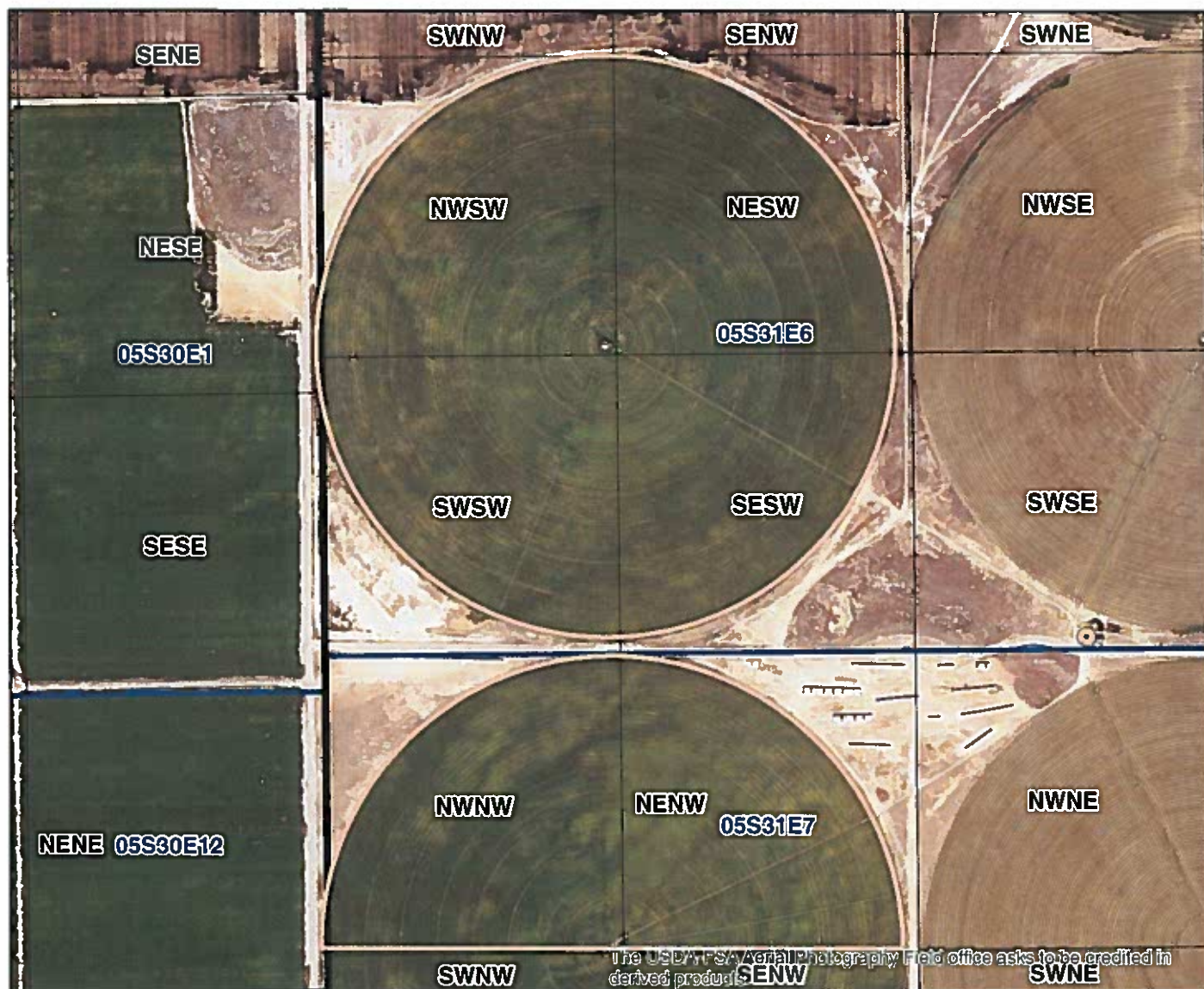
12. This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 4.0 afa per acre at the field headgate for irrigation of the lands above.
13. Use of water under this agreement will be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 120.



Idaho Water Resource Board Water Supply Bank Rental Agreement

Effective until December 31, 2016

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



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



0 0.25 0.5 Miles

STATE OF IDAHO
WATER RESOURCE BOARD

RECEIVED

NOV 17 2015

DEPARTMENT OF
WATER RESOURCESAPPLICATION TO RENT WATER
FROM THE BOARD'S WATER SUPPLY BANKApplicant Name: Behrend Behrend and Knittel Farms LLP

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

Yes ☒ No ☐

If yes, specify companion water rights in Section 4

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

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

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

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

MINIMUM REQUIREMENT CHECKLIST

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

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

Department Use Only – Proposed Water Right(s)

35-14262	35-14260	35-7373	35-02713
35-14258	35-10422	35-7169	35-2553A

**STATE OF IDAHO
WATER RESOURCE BOARD**

Application to Rent Water (Continued)

1. CONTACT INFORMATION

A. Applicant Behrend Behrend and Knittel Farms

Mailing Address	<u>PO Box 815</u>	<u>Aberdeen</u>	ID	<u>83210</u>
	Street	City	State	Zip Code
Email Address	<u>nbehrend@gmail.com</u>		Phone Number	<u>208-221-0342</u>

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

Representative _____	Professional Title _____
Organization _____	Relationship to Applicant _____
Mailing Address _____	
Email Address _____	Phone Number _____

2. MAP

Create a map of the proposed point(s) of diversion, place(s) of use and water diversion, delivery and distribution systems. Make sure the rental place of use is outlined and annotated with legal land descriptions (Township, Range, Section and Quarter-Quarters) or with GPS coordinates. For irrigation purposes, mark the number of acres you desire to irrigate. Attach the map to this application and label it **Attachment 2**.

3. DESCRIPTION OF PROPOSED USE FOR RENTAL WATER

A. Describe why you desire to rent water and provide a detailed description of your proposed use. If the proposed use is not for irrigation, describe in detail how you determined the amount of rental water required. If the space below is insufficient, attach additional sheets as required and label them **Attachment 3A**:

Water to be used as mitigation to meet the diversion reduction required by the negotiated settlement between the surface water coalition and the ground water districts on the ESPA. Water rented will not be diverted.

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

Desired Rate (Cubic Feet/Second)	Desired Volume (Acre-Foot)	Minimum Rate* (Cubic Feet/Second)	Minimum Volume* (Acre-Foot)	Desired Acres (if applicable)
2.66 CFS	356.4 AF	CFS	AF	178.2 AC

* Sometimes water rights provide an exceptionally low rate per acre and/or low volume per acre. This section is meant to establish an acceptable range of water sufficient for your proposed water use. Please see question 4B and complete if necessary.

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

Desired Start Date (month/day/year)	Latest Possible Start Date (month/day/year)	*Mark Desired Rental Duration (Calendar Years)					**Applicant's preference if rental application cannot be processed prior to the latest possible start?	
01/01/2016	04/01/2016	☐ 1	☐ 2	☐ 3	☐ 4	☒ 5	☒ Process application as soon as possible	☐ Return application to applicant

* The number of years permissible for a rental is subject to the lease contract duration for the water right(s) being rented.

** Per Idaho Code 42-201, it is unlawful to divert or use water without a valid water right. Water Supply Bank rental applicants are not authorized to utilize rental water prior to the execution of an approved rental agreement. Rental requests may be returned to applicants if no water is available from the Bank to fulfill a rental request.

STATE OF IDAHO
WATER RESOURCE BOARD

Application to Rent Water (Continued)

- D. Describe your water distribution system and how rental water will be delivered from the point(s) of diversion (POD) to the proposed place of use (POU):

2-300 HP pumps supplying water to 7 pivots by 8" underground mainline. However, rental water is to be used as mitigation and will NOT be diverted

- E. Describe the physical type (pump, headgate, etc.) and location of the POD from which rental water is proposed to be diverted:

POD Description	Water Source	Other Water Rights Diverted from this POD
SESWSE Sec6 05S31E	Ground Water-pump	35-7169,35-7373,35-10422

If the POD(s) above are located where water is turned into a canal, lateral or ditch, or if they are located on your property but are serviced by water that is delivered via a canal, lateral or ditch, your rental request must include documented authorization from all relevant canal companies, irrigation districts and/or water delivery entities, confirming that they consent to your diversion of water from their system.

- F. Has documented consent from all relevant water delivery entities been obtained? Yes ☒ N/A ☒
If yes, include documented consent as Attachment 3F.

- G. Do any POD(s) identified in Question 3E divert from a water source that may require water modeling? Yes ☐ No ☒
Refer to the Water Modeling Requirements Information Sheet to determine if a rental POD may require water modeling.

- H. Has water modeling been provided with your rental request? Yes ☐ N/A ☒
If yes, label modeling Attachment 3 H.
Rental applications that require modeling will be returned if modeling is not provided.

- I. Specify the desired beneficial use of water and the requested season of use or number of acres required:

- ☐ Irrigation _____ (number of acres) Duration: Subject to IDWR standard seasons of use
☐ Commercial from: _____ (mm/dd) to: _____ (mm/dd)
☐ Stockwater from: _____ (mm/dd) to: _____ (mm/dd)
☐ Industrial from: _____ (mm/dd) to: _____ (mm/dd)
☒ Other: Mitigation from: 01/01 (mm/dd) to: 12/31 (mm/dd)

- J. For irrigation uses, do you propose to divert water at a rate greater than 0.02 cfs/acre? N/A ☐ Yes ☐ No ☒
If yes, justify the rate of flow and attach any supporting documents as Attachment 3J. Justification may include information on soil composition, conveyance losses, crop type, irrigation systems, public access areas, etc. A rate of 0.03 cfs/acre is permissible for irrigation of 5 acres or less.

- K. Do you own the land at the proposed rental place of use (POU)? Yes ☐ No ☒
If no, attach documentation from the POU owner/operator confirming your authorization to use the POU and label it Attachment 3K.

- L. List all other water rights and sources of water at the rental place of use for the same purpose, including privately owned water rights and water received from a municipal supplier, an irrigation district, a canal company or any other water delivery entity. Explain why additional water is required:

STATE OF IDAHO
WATER RESOURCE BOARD

Application to Rent Water (Continued)

4. RENTAL REQUESTS FOR SPECIFIC WATER RIGHTS

A. Are you requesting to rent specific water rights?

Yes ☒ No ☐

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

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

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

Water Right Elements Leased to Water Supply Bank					Leased totals, minus water right elements involved in active rental agreements, equals water right elements available for rent	Water Supply Bank Rental Request		
Water Right Number (leave blank if sub-total of combined limits)	Nature of Use	Diversion Rate (CFS)	Volume (AF)	Acres (AC)		Diversion Rate (CFS)	Volume (AF)	Acres (AC)
35-14262	Irrigation							
35-14258	Irrigation							
35-14260	Irrigation	.4	86.8	43.4		.4	86.8	43.4
35-10422	Irrigation							
35-7373	Irrigation							
35-7169	Irrigation	.78	106.2	53.1		.78	106.2	53.1
35-02713	Irrigation	.74	87.2	43.6		.74	87.2	43.6
35-2553A	Irrigation	.74	76.1	38.1		.74	76.1	38.1
Applicants must ensure the requested rate per acre and volume per acre do not exceed the rate per acre and volume per acre limits of water rights leased to the Water Supply Bank					TOTAL	2.66	356.4	178.2
						CFS	AF	AC

**Attach multiple copies of this page if space above is insufficient to list all water rights requested to be rented on this application.*

B. If water right conditions, combined limits, or the sum of all water right elements being requested provide an unconventional duty of water (e.g., an unusually low rate per acre or volume per acre for irrigation use), explain how your proposed rental will sufficiently accomplish your intended purposes. Attach a separate page if space is insufficient and label it **Attachment 4B**:

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

Yes ☐ No ☒

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

STATE OF IDAHO
WATER RESOURCE BOARD

Application to Rent Water (Continued)

5. ADDITIONAL INFORMATION

- A. Is this the first time that rental water is being requested for this purpose at the rental place of use? Yes ☒ No ☐
If no, list previous rental requests/agreements and explain why you have not secured a permanent water right for your needs:

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

- C. Was this rental application submitted in response to a Notice of Violation (NOV) or a pending NOV? Yes ☐ No ☒
If yes, describe the date and location of the NOV.

- D. Additional Information

DECLARATION

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


Signature of Applicant

Nic Behrend-Behrend Behrend and Knittel
Printed Name of Applicant

11/10/15
Date

Signature of Representative

Printed Name of Representative

Date

Mail to:

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

IDAHO

Department of
Water Resources

Mapping Tool for Water Right Applications



[Help](#) [Other Maps](#) [Water Resources Home](#) [Idaho.gov](#)

Attachment #2

Attachment 3K

FARM LEASE

THIS FARM LEASE ("Lease"), effective as of November 1, 2014, is made by and between **J. R. Simplot Company**, a Nevada corporation, whose address is 999 Main Street, Suite 1300, Boise, ID 83702 ("Landlord") and **Behrend, Behrend, Knittel Farms LLP**, an Idaho limited liability partnership, whose mailing address is 2976 West 2000 South, Aberdeen, Idaho 83210 (hereafter referred to as "Tenant" or "BBK").

WITNESSETH:

1. **LEASE.** Commencing on November 1, 2014 Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, on the terms and conditions herein set forth, the real property and certain improvements situated thereon all located in Bingham County, Idaho, described on **Exhibit A** attached hereto (the "Leased Premises"), together with Landlord's appurtenant water rights. The Leased Premises consists of approximately 861 acres of farm land that are irrigated with wheel lines; 850.5 acres of farm land that are irrigated with overhead center pivot sprinkler systems; two potato storage buildings, 6 grain storages and all of the related irrigation equipment, pumps and motors.

There are additional grain storages, a shop, office, stack yard and three homes that are situated on adjacent land owned by Landlord, but are not included in this Lease from Landlord to Tenant. Tenant shall not be allowed to use the additional grain storages, shop, office, stack yard and three homes without the prior written consent of Landlord. This Lease is subject to all easements, restrictions, rights-of-way, covenants, conditions, reservations and exceptions of record or apparent upon inspection of the Leased Premises.

2. **TERM.** The term of this Lease shall commence on November 1, 2014 and shall expire on October 1, 2021 (the "Initial Term"); provided that the term of this Lease shall be automatically extended on an annual basis year to year upon the same terms and conditions (except for rent, which is determined as otherwise set forth in this Lease) unless

either party gives written notice of termination to the other at least three (3) years prior to the end of the term or any applicable extension.

a. Example: On July 15, 2018, Tenant provides written notice to Landlord of the termination of the Lease. In such event, this Lease will then expire on October 1, 2021. However, if neither party provides the other, on or before October 1, 2018, with notice of termination of this Lease, the term would automatically extend until October 1, 2022. During the next year of the term of the Lease if neither party provides the other, on or before October 1, 2019 with notice to terminate the Lease, the term of the Lease would automatically extend until October 1, 2023.

b. Extended Use of Potato Storages: Upon the termination of this Lease, Tenant may occupy and use the potato storages until June 30th of the calendar year following the date of termination provided that on or before the termination of this Lease, Tenant shall pay Landlord rent for the extended use of the potato storages at the rate that is equal to the rent charged for said storages during the final year of this Lease.

3. RENT.

a. Amount During Year 1 of Lease. During the first year of this Lease, Tenant agrees to pay to Landlord rent for the Leased Premises:

(i) [REDACTED] per acre for each acre of the Leased Premises used to grow potatoes.

(ii) [REDACTED] per acre for each acre of the Leased Premises used to grow grain.

This includes grain storage situated on the Leased Premises.

(iii) [REDACTED] per acre for each additional acre of the Leased Premises used to grow other crops.

(iv) [REDACTED] for the two (2) potato storage situated on the Leased Premises.

b. Rent Amount During Subsequent Years of this Lease. For the purposes of this Lease, except for the first Lease Year (which commences on November 1, 2014), a "Lease Year" shall commence on November 1 and shall end on the

following October 31. Prior to August 1 of each Lease Year, Landlord and Tenant shall mutually agree in writing upon the amount of rent that will be due the next Lease Year for each rent component described in Paragraph 3.a. above. In the event Landlord and Tenant do not reach agreement by August 1 of the current Lease Year as to the amount of rent due for the next Lease Year, this Lease shall automatically terminate on October 1 of the current Lease Year, notwithstanding the provisions of Paragraph 2 above.

c. Reimbursement for Irrigation System Improvements During Lease Term. Prior to the irrigation season during the first Lease Year, Tenant, at Tenant's expense, will install certain irrigation system improvements on the Leased Premises (the "Irrigation Improvements") with financing from Zions Bank. The financed cost of the Irrigation Improvements will be reimbursed semi-annually over the Initial Term of this Lease in accordance with the amounts contained on the reimbursement schedule attached hereto as Exhibit B. Reimbursement by Landlord to Tenant shall become due within fourteen (14) days of Landlord's receipt of Tenant's written evidence that Tenant has made each semi-annual payment of principal and interest to Zions Bank in accordance with the schedule contained on Exhibit B. .

d. Reimbursement for Irrigation System Improvements Upon Early Lease Termination. In the event this Lease terminates in accordance with Paragraph 3.b. above prior to the expiration of the Initial Term, Landlord shall reimburse Tenant for any unamortized principal balance (consistent with Exhibit C) that remains upon the termination of this Lease. Said reimbursement shall be due by Landlord to Tenant on or before the termination of this Lease. Effective as of the termination of this Lease, Tenant hereby conveys and assigns to Landlord, free and clear of all claims, liens and/or encumbrances, the Irrigation Improvements and Tenant agrees to execute such other and further instruments as Landlord may request to further evidence such conveyance and assignment. Landlord, at its option, may

make the payment due hereunder to either Zions Bank or Tenant (or jointly), in Landlord's discretion. Tenant hereby covenants that the financing for the Irrigation Improvements will not provide for a prepayment penalty or for the Zions Bank to have a lien thereon.

5. **ed. Payment.** Fifty percent (50%) of annual rent for each Lease Year during the term of this Lease shall be due and payable on April 1, and the remaining fifty percent (50%) of the rent for each Lease Year during the term of this Lease shall be due and payable on October 1. Payments will be considered late if not received by the 5th day of the month due, and a twelve percent (12%) penalty charge will then be accrued from the last day of the month that payment was due.

4. **IRRIGATION WATER SUPPLY.** Landlord makes no warranty as to the quantity or the quality of the irrigation water available for use on the Leased Premises. Tenant acknowledges and agrees that Landlord cannot forecast or control the amount of water that will be available to the Leased Premises during any irrigation season and Tenant expressly releases Landlord from any liability or damages arising from or relating to the quantity or quality of water delivered to the Leased Premises. Tenant also releases Landlord from any liability or damage arising from or relating to any curtailment that is ordered by the Idaho Department of Water Resources in response to any call made by a water right holder whose water rights are senior to the water rights that are appurtenant to the Leased Premises. Tenant takes on an "AS-IS" basis.

5. **LAND APPLICATION.** At the commencement of this Lease, a portion of the Leased Premises was used by Landlord for the land application of industrial effluent from Landlord's food processing plant located in Aberdeen, Idaho ("Aberdeen Plant"). That portion of the Leased Premises used to land apply effluent is equipped with 7 overhead center pivot sprinkler systems ("Primary Land Application Site"). During the term of this Lease, Landlord, or Landlord's tenant or successor as to the Aberdeen Plant site may,

from time to time, continue to require part of the Primary Land Application Site to be used for applying effluent after providing Tenant with no less than 30 days advance notice.

To accommodate Landlord's right to use of a portion of the Primary Land Application Site for receiving industrial effluent, Tenant shall be limited to raising any crops that are grown for direct human consumption (like potatoes) on no more than 4 center pivots of the Primary Land Application Site during each year of the term hereof. At any time during the term of this Lease, the remaining pivots on the Primary Land Application Site shall be available for Landlord to land apply industrial effluent. In the event Landlord elects to use the Primary Land Application Site for receiving industrial effluent, Tenant shall have the obligation to conduct the application of said effluent on the Primary Land Application Site in conformance with all applicable regulatory requirements, permits and conditions that are required for such land application. Landlord also reserves the right to utilize areas on the Leased Premises, beyond the Primary Land Application Site, for the land application of industrial effluent upon the terms and conditions set forth below. This includes the resumption of the use of any wells, irrigation systems, pumps, motors, pipelines or other improvements situated on the Leased Premises that are necessary for land applying the industrial effluent on the additional areas. In the event Landlord elects to begin the land application of industrial effluent on additional areas of the Leased Premises that are beyond the Primary Land Application Site, Landlord shall notify Tenant of that additional portion of the Leased Premises that will begin to receive industrial effluent ("Expanded Application Site") such notice to be delivered on or before May 31, of the then-current Lease Year. On or before July 1 following the notice by Landlord, Tenant shall provide Landlord with Tenant's notice of Tenant's election to either (a) receive the effluent and conduct the land application on behalf and at the direction of Landlord on the Expanded Application Site, or (b) modify the Leased Premises to exclude the Expanded Application Site. In the event Tenant fails to respond to Landlord on or before July 1, Tenant shall be deemed to have elected to modify the Leased Premises to remove the Expanded Application Site and any improvements that are necessary to conduct the land application thereon.

Should Tenant elect to modify the Leased Premises to exclude the Expanded Application Site, Tenant shall be allowed to remove its crop during the Lease Year in which Landlord provides notice as to the Expanded Application Site. Upon the removal of said crop, but in any event no later than November 1, Landlord may resume applying industrial effluent to all or any portion of the Leased Premises identified in Landlord's notice. Landlord will also be responsible for reimbursing Tenant for any unamortized principal amount of the Zions Bank Loan (consistent with Exhibit B) that is attributable to any Irrigation Improvements that are located on land removed from the Leased Premises in accordance with this Section 5.

If Tenant notifies Landlord that Tenant will receive and apply the industrial effluent on the Expanded Application Site, Tenant shall operate and conduct the land application in accordance with all regulatory requirements, permits and conditions that are required for such land application. This may include a restriction on the types of crops than can be grown on the land application area, together with additional record keeping requirements and restrictions on the use of commercial fertilizer.

For purposes of clarification, Tenant shall have the obligation to conduct any land application of industrial effluent on the existing Land Application Site throughout the entire term hereof without modification to the Leased Premises. The modification of the Leased Premises for reasons due to the land application of industrial effluent may arise only in the event Landlord elects to use any additional land located on any portion of the Leased Premises that is beyond the existing Land Application Site for receiving industrial effluent.

6. NO ASSIGNMENT. Tenant shall not assign or otherwise sell or transfer this Lease, or any interest therein, or let or sublet the Leased Premises or any part thereof without first obtaining the consent of Landlord in writing. Any such assignment, sale, conveyance, letting or subletting made without such consent shall be void and without force or effect. Neither this Lease nor any interest of the Tenant shall be assignable or

transferable in proceedings by or against the Tenant in execution, bankruptcy or insolvency, or any other manner by operation of law.

7. **LANDLORD NOT LIABLE.** Landlord shall in no way be responsible for loss or damage from any cause to any property of any nature, including but not limited to any crops placed in or on the Leased Premises, in conjunction with Tenant's use of the Leased Premises or otherwise.

8. **TENANT'S CARE AND USE OF LEASED PREMISES.** The Leased Premises will be used for commercial farming operations. Any other use must be approved by Landlord in writing prior to commencement of such other use. Tenant shall take good care of the Leased Premises, keep the same in neat and orderly appearance, farm the same in a good and farmer-like manner, perform normal upkeep and maintenance, allow no waste or injury to be committed thereon, and shall, at Tenant's expense, make all repairs necessary to keep the land and other improvements, above ground pipelines, fences, canals, ditches, drains and equipment in good condition and repair, (except to the extent Landlord is responsible for maintenance and/or repair of the same under Section 9 of this Lease), provided, however, should Tenant fail to keep the Leased Premises and improvements thereon in good condition and repair, Landlord may undertake repairs and invoice Tenant for the cost thereof. Tenant shall also be responsible for any structural damages to any building improvements or roofs caused by Tenant, Tenant's employees, contractors or invitees.

Tenant will maintain all wheel line and center pivot sprinkler systems located on the Leased Premises, including but not limited to tires, sprinklers, gear boxes, motors, control panels and other items.

Tenant is responsible for all expenses associated with Tenant's activities on the Leased Premises, including, but not limited to utility bills and electrical use charges, and Tenant shall set up its own account with Idaho Power for electrical service to any irrigation equipment and improvements on the Leased Premises. Tenant shall, at the end of the term or any earlier termination, quit and surrender the Leased Premises in as good order and

Sec. 9601 et seq.; or the Hazardous Waste Cleanup-Model Toxic Control Act, RCW 70.105D, all as amended and including all regulations promulgated thereunder.

9. **LANDLORD'S MAINTENANCE AND REPAIR.** Landlord will be responsible for and bear the cost of maintaining and repairing the wells that are used to provide irrigation water for the Leased Premises and the related pumps, motors and control panels. All underground mainlines that are used to transport water to the wheel line sprinkler systems will also be maintained and repaired by Landlord. Landlord shall also be responsible for any roof of structural repairs to any building improvements that become damaged for reasons that are not related to the conduct of Tenant or Tenant's employees, contractors or invitees.

10. **INDEMNIFICATION.** Tenant shall indemnify, defend and hold Landlord harmless from any and all claims, demands, damages, injuries, rights and causes of action, whether validly asserted or not, arising by reason of any act, conduct, negligence or omission to act of the Tenant, or any of its agents or employees, whether or not the basis for such asserted claims arises on or off the Leased Premises.

Tenant shall carry throughout the term hereof adequate workmen's compensation insurance (statutory limits), employer's liability insurance with limits of at least \$1,000,000 and comprehensive liability insurance written on an occurrence basis and with limits of at least \$2,000,000 naming Landlord as additional insured, such insurance covering all Tenant's operations and all other obligations hereunder to Landlord (each containing a waiver of subrogation benefiting Landlord), together with property insurance covering the replacement value of the above ground wheel line and overhead center pivot sprinkler systems (and including the Irrigation Improvements), naming Landlord as loss payee. Tenant shall furnish Landlord with certificates of insurance evidencing such insurance coverage and such other proof of such insurance as Landlord may request. Said certificate of insurance shall include the statement on the certificate that the insurance company shall give Landlord at least fifteen (15) days' notice in the event of lapse or change in insurance coverage.

11. **LANDLORD RIGHT OF ENTRY.** Landlord shall have the right to enter upon the Leased Premises at such times and places as are necessary for the purpose of inspecting said Leased Premises, to perform Landlord's obligations hereunder, for purposes reserved to Landlord and others under the terms of this Lease, and to ensure compliance with this Lease.

12. **REAL PROPERTY TAXES.** Real property taxes levied upon the Leased Premises and taxes on the irrigation improvements and other property of Landlord shall be paid by Landlord. Taxes upon Tenant's personal property, including crops, shall be paid by Tenant.

13. **TENANT EXPENSES.** Tenant further agrees that Tenant will perform, operate, furnish or pay according to the following:

- a. Perform all ground preparation.
- b. Cultivate the farm land faithfully in a timely, thorough and businesslike manner, in accordance with standards of good husbandry. Tenant shall keep the Leased Premises neat and orderly, and neither commit nor permit waste or injury to the Leased Premises.
- c. Provide all machinery, labor, fuel and power necessary to farm the Leased Premises properly.
- d. Provide all materials necessary for production of the crops, including seed, in accordance with accepted farming practices.
- e. Prevent weeds from going to seed on the Leased Premises and control pests and injurious insects in accordance with accepted farming practices. If Tenant fails to perform these covenants, Landlord may (but is not obligated to) enter upon the Leased Premises and perform such operations as may be required and charge Tenant's account for the same.
- f. Preserve established water courses, ditches and soil conservation measures. In the event Tenant will be utilizing any water rights belonging to

Landlord, Tenant will use such rights in compliance with the restrictions contained in any such rights, so that the same will not be abandoned.

g. Operate the farming operations within applicable law and regulations of federal, state, county and other regulatory agencies.

h. Use diligence and care in the operation of any irrigation or pumping equipment belonging to Landlord, and at its expense, drain the same at the end of the growing season.

14. AGRICULTURAL CHEMICALS. No poison, herbicide, pesticide, fertilizer or other foreign chemical or substance, other than those approved by the United States Department of Agriculture, shall be applied to the Leased Premises or crops growing thereon. Any and all of such materials and substances shall be applied in strict compliance with and only at the times set forth in the instructions contained on the label or otherwise furnished by the manufacturer thereof. No experimental poisons, herbicides, pesticides, fertilizers or other foreign chemical or substance shall be applied to the Leased Premises or the crops growing thereon without the prior written consent of Landlord. All poisons, herbicides, pesticides, fertilizers or other foreign chemicals or substances which Tenant may apply to the Leased Premises or crops growing thereon shall be used and applied at Tenant's sole cost, risk and liability, and Tenant does hereby agree to indemnify, hold and save Landlord free and harmless of and from any and all claims, demands, damages or liabilities of whatever kind or nature which in any manner arise out of or result from any use or application of any such substances.

15. WAIVER. In the event Landlord waives any right herein reserved, or waives the performance of any covenant to be kept and performed by Tenant, express or implied, or any breach hereof by Tenant, said waiver shall not be construed to be a waiver of any subsequent breach of such covenant or any other covenant.

16. TENANT INSPECTION; NO REPRESENTATIONS OR WARRANTIES. Tenant has inspected the Leased Premises, is familiar with the property, and is satisfied with and accepts the same in the present condition thereof.

Landlord makes no representations as to the present condition of the Leased Premises, as to the quality, fertility or productivity of the soil, or as to the productivity of the Leased Premises, and makes no warranty as to the quantity or the quality of the irrigation water available for use on the Leased Premises. Tenant takes the Leased Premises on an "AS-IS" basis, subject to all defects, latent or patent.

It is understood and agreed that this written Lease constitutes the whole and entire agreement between the parties, and that there are no oral agreements, representations or warranties collateral to or affecting this Lease other than herein expressly set forth in writing. Tenant declares that Tenant has not entered into this Lease in reliance on any oral or verbal representations by Landlord, its agents or employees, other than the written agreements herein set forth.

17. ATTORNEY'S FEES. The prevailing party in any suit or dispute or action arising under this Lease for the enforcement or interpretation hereof shall be entitled, in addition to all costs and damages that might be awarded, further sums for reasonable attorney's fees.

18. PEACEFUL POSSESSION. Landlord agrees that the Tenant, upon payment of rent and performance of the covenants and agreements in this Lease, including but not limited to those covenants contained in paragraphs 3 and 8, above, on the part of the Tenant to be performed at all times during said term, shall peaceably and quietly have, hold and enjoy the Leased Premises, subject to (i) the remaining term of the existing lease for the Leased Premises (as described in Section 27), (ii) the occupancy and use of the grain storages, shop, office and three homes by Landlord or Landlord's designee (iii) all easements, restrictions, rights-of-way, covenants, conditions, reservations and exceptions of

record or apparent upon inspection of the Leased Premises; and (iv) the rights reserved by Landlord in this Lease.

19. **HOLDOVER.** In the event that Tenant is permitted to hold over the term, with the express written consent of Landlord, such holding over shall be construed as a tenancy at will, and shall be terminable at the will of Landlord upon Landlord's giving notice in writing to Tenant to vacate the Leased Premises. To the extent permitted by applicable Idaho law Tenant expressly waives all rights and privileges conferred by Idaho Code §6-303.

20. **PREPARATION FOR FOLLOWING YEAR.** In the event this Lease terminates in accordance with Paragraph 3.b. or for any reason provided herein, Landlord shall have possession of any farm land from which crops are removed as soon as the crops are harvested after August 1 in the year in which this Lease terminates, so that Landlord may prepare said farm land for the following year's farming operation.

21. **DEFAULT.** In the event Tenant does not keep and perform each and every covenant and agreement set forth in this Lease (time being of the essence) or shall abandon the Leased Premises, Landlord may give written notice to Tenant specifying the same. If Tenant does not cure within five (5) days of the notice (or such longer period of time as reasonably may be necessary to cure a nonpayment default exercising reasonable diligence), the Tenant shall forfeit to Landlord all rights to further occupancy of the Leased Premises or any part thereof. In such event, at its option Landlord may, in addition to such other remedies as it may have at law or equity, without any legal process or warrant, reenter upon the Leased Premises and remove all persons and hold the Leased Premises without interference on the part of the Tenant. Tenant agrees that in such case this Lease shall be terminated and Tenant shall not be entitled to have any rights hereunder; provided, however, that if such forfeiture and taking of possession by Landlord takes place after the planting and prior to the harvest of crops, Tenant shall be entitled to any proceeds received from the sale of said crops harvested during the Lease term in which said termination takes place, after deducting (1) any damages suffered by Landlord because of any failure to perform hereunder

All notices to be given to the Tenant shall be addressed to:

Behrend, Behrend Knittel Farms
Attn: Nic Behrend
2976 W 2000 S
Aberdeen, ID 83210

Either party may change such address by giving notice in writing to the other party as herein provided.

25. BINDING AGREEMENT. It is agreed that the terms, conditions and provisions of this Lease shall be binding upon the heirs, executors, administrators, successors and assigns of the respective parties, provided however, Tenant may not assign this Lease or sublease the Leased Premises or any part thereof without Landlord's prior written consent.

26. NO RECORDING. This Lease will not be recorded.

27. USE PRIOR TO LEASE DATE. Tenant understands that Landlord has an existing tenant on the Leased Premises whose lease does not expire until October 31, 2014. Tenant may have access to the Leased Premises prior October 31, 2014 if acceptable to the current tenant. Access will be only for the purposes of obtaining soil and moisture samples, cultivation, land preparation work, installing the Irrigation Improvements and planting (if necessary for Tenant's 2015 crop).

28. FURTHER ASSURANCES. Both Tenant and Landlord agree to work together on issues that arise during the term of this Lease to ensure the parties receive the benefit of this Lease.

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Parcel 4: (Southerly Home Parcel): A trapezoid shaped parcel of land located west of the Aberdeen Springfield canal within the S½SE¼SW¼ of Section 8 T.5S R.31E containing a home.

Images showing the location of excluded Parcels 1, 2, 3 and 4 follow this page.