

# WATER SUPPLY BANK LEASE CONTRACT

RECEIVED  
NOV 24 2015  
DEPARTMENT OF  
WATER RESOURCES

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

**LESSOR: KMN LIVING TRUST**  
PO BOX 10021  
KETCHUM ID 83340  
208-720-7182

## RECITALS

1. The Board is authorized under chapter 17, title 42, Idaho Code to operate a water supply bank and to contract with lessors to act as an intermediary in facilitating the rental of water.
2. On October 28, 2015, the Lessor filed an application to lease the water right(s) described below into the Water Supply Bank.
3. The Director of the Idaho Department of Water Resources has reviewed the application for compliance with the Water Supply Bank rules and has approved the Lease subject to the conditions listed below.

NOW, THEREFORE, in consideration of the mutual covenants and contracts herein contained, and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. **WATER RIGHTS:** The Lessor shall lease and the Board shall accept into the Bank the Applicant's water rights described as follows:

### Summary of Water Rights or Portions Leased to the Bank

Water Right	Priority Date	Source	Tributary	Leased Rate	Annual Leased Volume	Total Leased Acres
37-2165D	11/26/1909	Adams Gulch Creek	Big Wood River	0.15 cfs	21.4 af	6.1 ac

**Annual Lease Totals** 0.15 cfs 21.4 af 6.1 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.

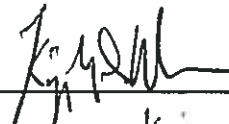
#### Minimum Payment Acceptable: Current Rental Rate

3. **TERM OF LEASE:** This Lease shall take effect when both parties have signed it and shall continue in effect until December 31, 2020.
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.

**KMN LIVING TRUST**  
PO BOX 10021  
KETCHUM ID 83340

By   
Printed Name Kipp Nelson

Date 11/23/2015  
Title Grantor

**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 1/5/2016

Lease approved by IDWR 

Date 1-5-2016

# ATTACHMENT A

## WATER RIGHT NO. 37-2165D WATER SUPPLY BANK CONDITIONS OF ACCEPTANCE

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

**Lessor:** KMN LIVING TRUST  
PO BOX 10021  
KETCHUM ID 83340  
208-720-7182

**Location of Point(s) of Diversion for Water Right 37-2165D,**

ADAMS GULCH CREEK SESE Sec. 2, Twp 04N, Rge 17E, BLAINE County

<u>Water Right</u>	<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
37-2165D	Irrigation	04/15 to	10/31	0.15 cfs	21.4 af
<b>Total:</b>				<b>0.15 cfs</b>	<b>21.4 af</b>

**Place of Use to be Idled Under This Lease:** IRRIGATION

Twp	Rge	Sec	NE				NW				SW				SE				Total s
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
04N	17E	1											1.9	4.2					6.1

Total Acres: 6.1

### Conditions Applicable to All Leased Water Rights

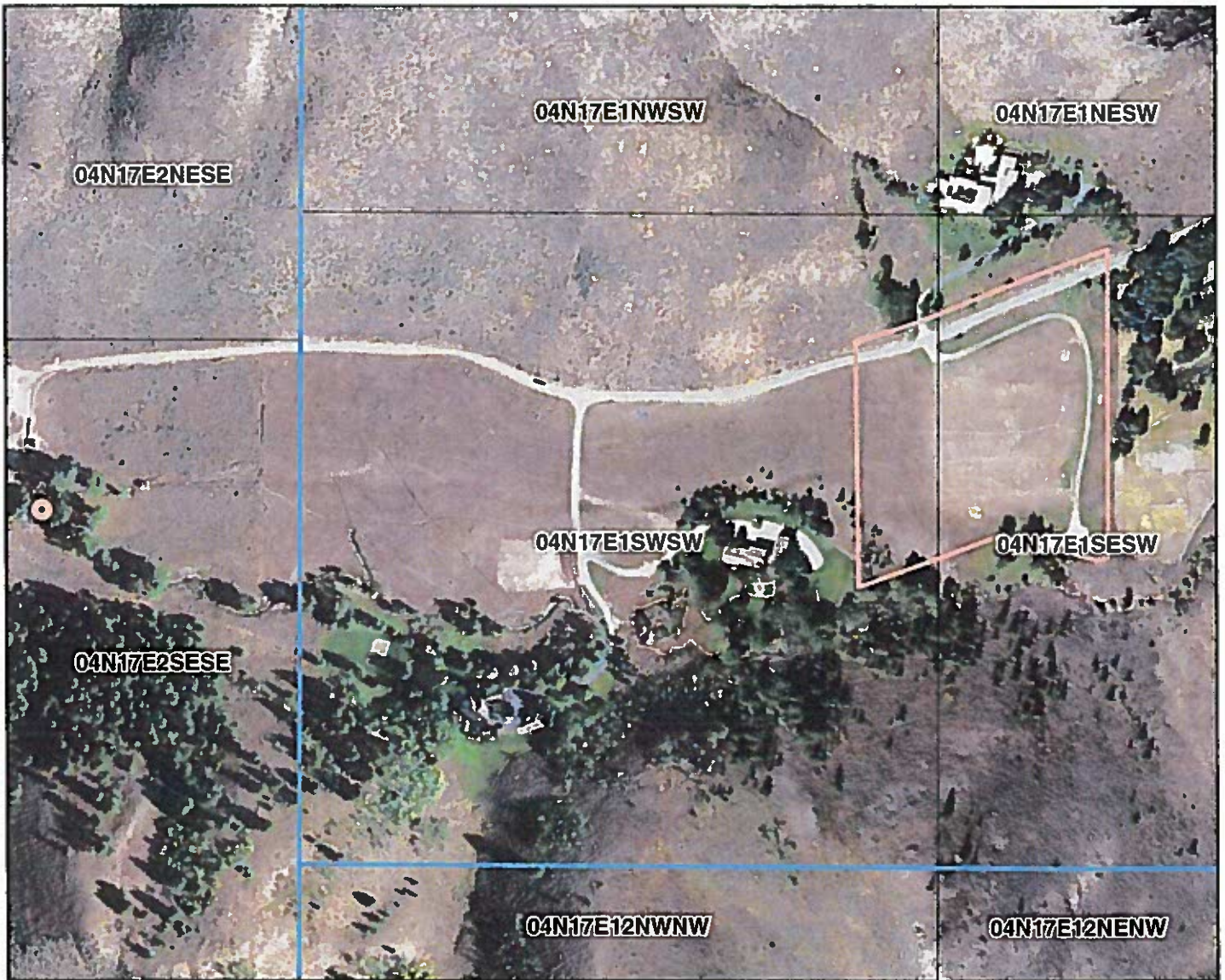
1. The water rights referenced above will be rented from the bank at the current rental rate.
2. There is no rental payment to the lessor of the water right if the right or a part thereof is not rented from the bank.
3. While a right is in the bank, the lessor may not use the right without approval of the Department, even if the right is not rented from the bank. Any violation of the terms of this lease may result in enforcement procedures pursuant to Idaho Code § 42-351 for illegal diversion and use of water and may include civil penalties pursuant to Idaho Code § 42-1701B.
4. A right accepted into the bank stays in the bank until the Board releases it, or the lease term expires. A right may be released from the bank upon request, provided the Board approves the release. Unless approved by the Department, leased rights may not be immediately available for release.
5. While a water right is in the bank, forfeiture provisions are stayed pursuant to Idaho Code § 42-223(5).
6. Rental of water under this right is subject to the limitations and conditions of approval of the water right.
7. Failure of the right holder to comply with the conditions of acceptance is cause for the Director to rescind acceptance of the lease.
8. Acceptance of a right into the bank does not, in itself, confirm the validity of the right or any elements of the water right, 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.






Idaho Water Resource Board  
Water Supply Bank Lease

37-2165D  
Effective until December 31, 2020

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



2013 USDA-FSA Aerial Photography

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



OCT 28 2015

DEPARTMENT OF WATER RESOURCES

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

An application to lease or sell a water right into the Water Supply Bank must be prepared in accordance with the minimum requirements listed below to be acceptable for processing by the Department. Use this checklist to ensure all necessary documentation has been provided. This checklist is part of the lease application and must be included with the lease application. **Incomplete applications will be returned to applicants for completion.**

Designated Applicant Kipp M. Nelson, Trustee of KMN Living Trust  
(Select one owner – see item 1A on the application)

Water Right No. 37-2165D  
(One water right per application)

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

**YES**

- Completed *Water Supply Bank Lease or Sale Application Checklist* (this form).
- Completed *Application to Sell or Lease a Water Right to the Water Supply Bank* (pages 2-3).
- Application filing fee of \$250.00 per water right. If you are submitting more than one lease application and the water rights have an overlapping, common place of use, or a common diversion rate or volume, the total fee for all water rights is \$500.00. For places of use, multiple water rights must be used to irrigate the same lands in order to qualify for the joint filing fee. Individual filing fees are required for water rights that share a common permissible place of use but which cover separate acres within the permissible place of use.

**Attachment N/A YES**

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

**Department Use Only**

Fee Amount \$ <u>250.00</u>	Received By: <u>J. Strange</u>	Date Received: <u>10-28-15</u>	Receipt # <u>C101145</u>
W-9 received? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	(Route W-9 to Fiscal)	Name on W-9: <u>Kipp M Nelson</u>	

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

## 1. CONTACT INFORMATION

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

Designated Applicant Kipp M. Nelson, Trustee of KMN Living Trust Email Address kipp@flashlightfilmsllc.com  
Mailing Address PO Box 10021, Ketchum, ID, 83340 Phone Number 208-720-7182

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

OR

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

B. Has the designated applicant completed an IRS Form W-9 (Attachment 1B)? Yes  No

C. Are all applicants on this form listed in IDWR's records as the current owners of the water right? Yes  No   
If no, attach a *Notice of Change in Water Right Ownership* form along with the required documentation and fee (Attachment 1C).

D. Is the diversion works or system owned or managed by an irrigation district or water delivery company? Yes  No   
If yes, provide written consent from the company, corporation or irrigation district authorizing the proposed sale or lease (Attachment 1D).

E. Is this application being completed by an authorized representative of the Designated Applicant? Yes  No   
If yes, representatives (includes employees of Designated Applicant companies) must complete this section and submit documentary proof of their authority to represent the Designated Applicant (Attachment 1E).

Name of Representative James P. Speck Organization Speck & Aanestad, A Professional Corp.  
Professional Title attorney Email Address jim@speckandaanestad.com  
Mailing Address PO Box 987, Ketchum, ID, 83340 Phone Number 208-726-4421

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

OR

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

## 2. DESCRIPTION OF WATER RIGHT OFFERED TO THE BANK

Water Right Number 37-2165D  The full water right is being offered to the Bank.

OR

A part of the water right is being offered to the Bank.  
(If a portion of a water right is being offered, complete Attachment 2)

## 3. GENERAL INFORMATION

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

None exists

B. Describe any other water rights used for the same purpose at the same place of use as the water right being offered to the Bank.

None

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

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

D. Will the present place of use continue to receive water from any other source? Yes  No   
If yes, describe. \_\_\_\_\_

E. Has any portion of this water right undergone a period of five or more consecutive years of non-use? Yes  No   
If yes, describe and attach Watermaster records or other evidence to demonstrate that the water right has not been lost through abandonment or forfeiture pursuant to Section 42-222(2), Idaho Code. \_\_\_\_\_

F. Is this water right involved in any other IDWR process such as an application for transfer or a mitigation plan? Yes  No   
If yes, describe. \_\_\_\_\_

4. MAP

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

5. SALE/LEASE AGREEMENT

A. Is the water right, or portion thereof, offered to the Idaho Water Resource Board (IWRB) for sale  or lease ?  
If lease, specify the years when the use of water will be suspended: 2016 to 2020 (maximum lease period 5 years).  
(Year) (Year)

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

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

The Designated Applicant acknowledges the following:

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

Signature of Designated Applicant

Kipp M. Nelson, Trustee

Printed Name

Date

10/14/15

Signature of Authorized Representative

Printed Name

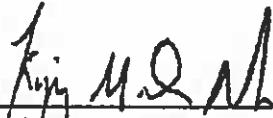
Date

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

## AUTHORITY TO REPRESENT

The undersigned hereby authorizes his attorney, James P. Speck of the law firm of Speck & Aanestad, A Professional Corporation, to represent them in all matters relating to the leasing of their Water Right No. 37-2165D to the Idaho Water Supply Bank.

Dated this 21 day of October, 2015.



\_\_\_\_\_  
Kipp M. Nelson, Trustee of KMN Living Trust

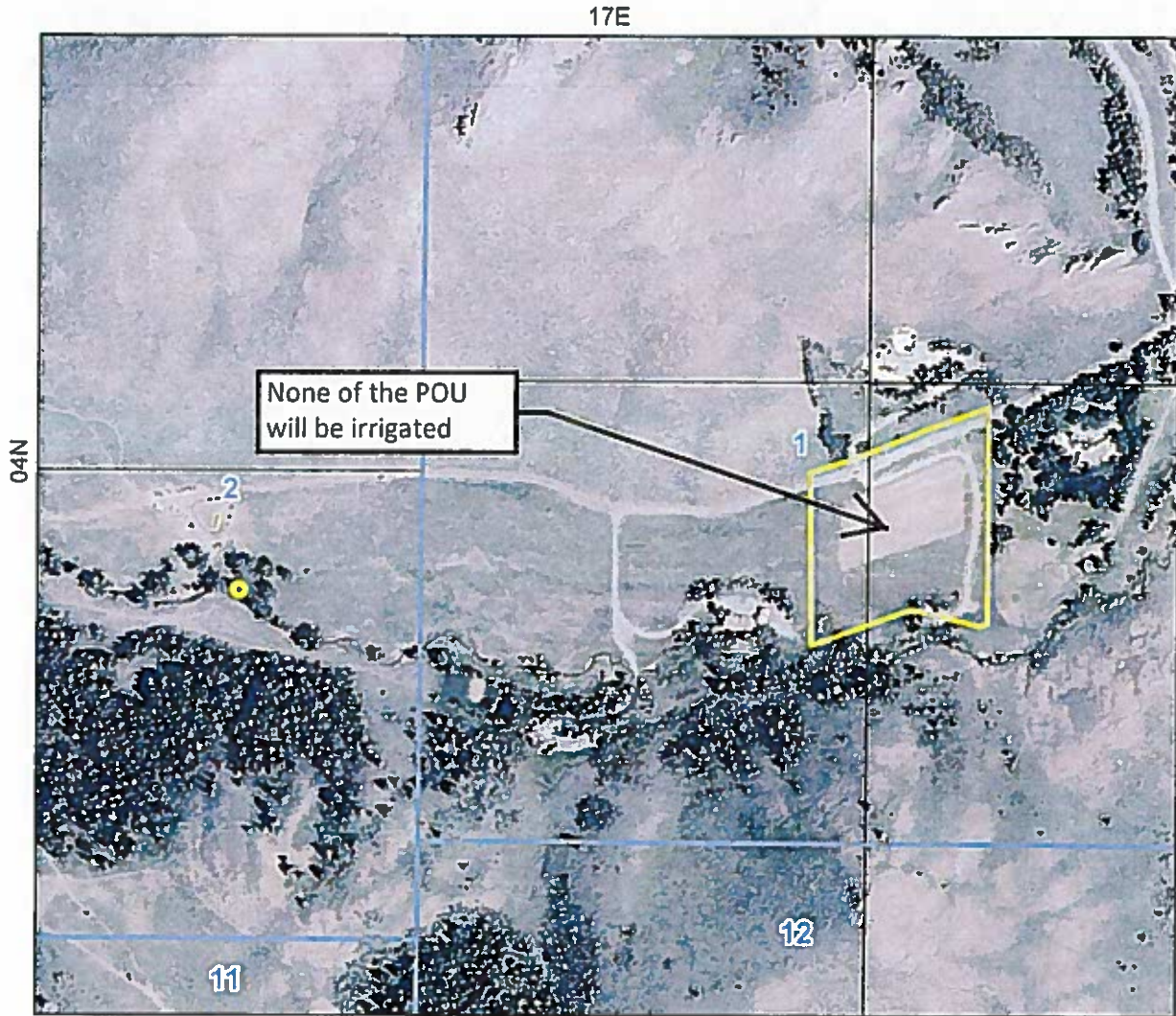
Attachment 1E

State of Idaho  
Department of Water Resources

# Water Right 37-2165D

## IRRIGATION

The map depicts the place of use for the water use listed above and point(s) of diversion of this right as currently derived from interpretations of the paper records and is used solely for illustrative purposes. Discrepancies between the computer representation and the permanent document file will be resolved in favor of the actual water right documents in the water right file.



- Point of Diversion
- Place Of Use Boundary
- Townships
- PLS Sections
- Quarter Quarters





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](http://www.idwr.idaho.gov)

C.L. "BUTCH" OTTER  
Governor

GARY SPACKMAN  
Director

January 6, 2016

KMN LIVING TRUST  
PO BOX 10021  
KETCHUM ID 83340

**RE: WATER SUPPLY BANK LEASE CONTRACT FOR WATER RIGHT 37-2165D**

Dear Lessor:

Water right 37-2165D was leased into the Water Supply Bank (Bank) as of October 28, 2015, in accordance with the enclosed executed lease contract. **Your water right, as described on the lease contract, is considered leased into the Bank and should remain unused until it is formally released from the Bank.** More information and further restrictions placed on your water right while leased can be found in conditions of acceptance of the lease contract. Read the conditions of acceptance carefully.

The right will automatically be released from the Bank on **December 31, 2020**, 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](http://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 me at 287-4910.

Sincerely,

A handwritten signature in black ink, appearing to read 'Clay Webster'.

Clay Webster  
Water Resource Agent  
WSB Process Point of Contact

Handwritten initials 'SW' in black ink, positioned to the left of the signature block.

Enclosure: Executed Lease Contract

c: James Speck – Speck & Aanestad  
Allen Merritt - IDWR Southern Region  
Kevin Lakey – Water District 37



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](http://www.idwr.idaho.gov)

C.L. "BUTCH" OTTER  
Governor

GARY SPACKMAN  
Director

November 13, 2015

KMN LIVING TRUST  
PO BOX 10021  
KETCHUM ID 83340

**RE: APPLICATION(S) TO LEASE WATER RIGHT(S) 37-2165D 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(s) to the Water Supply Bank. **I have enclosed two original Water Supply Bank Lease Contracts for your review and signature. Please sign and return ALL Lease Contracts within 14 days.** Upon signature and return of the contracts, the Department will also sign the original contracts and return an executed copy to you. The Lease Contract is not considered final until you and the Department have both signed.

The rights will automatically be released from the Bank on **December 31, 2020**, unless the rights are 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 me at 287-4910.

Sincerely,

*for* Clay Webster  
Water Resource Agent  
WSB Process Point of Contact

Enclosure: Proposed Lease Contracts

c. Speck & Aanestad

**Hersley, Jean**

---

**From:** Merritt, Allen  
**Sent:** Thursday, November 05, 2015 12:06 PM  
**To:** Hersley, Jean  
**Subject:** RE: WSB Lease Application for 37-2165D

I do not have any issues.

---

**From:** Hersley, Jean  
**Sent:** Thursday, November 05, 2015 10:40 AM  
**To:** Merritt, Allen; Kevin Lakey  
**Subject:** WSB Lease Application for 37-2165D

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:** KMN LIVING TRUST

**Memo Date:** November 5, 2015

**Water Right Number(s):** 37-2165D

**Reviewers Name:** Jean Hersley

**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		2011-2015
7	Injury to other water rights			
	If the POD is through a delivery entity, was consent provided?		X	
	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		overlaps with City of Ketchum right
	Complete a combined limits review	X		
	Complete POD overlap analysis (if there is an overlap add condition to lease)	X		
		Yes	No	
	Are there overlapping rights that need to be placed in the bank also?		X	
	Will the place of use continue to receive water?		X	
9	Local Public Interest			
	Does the processor know of any problems this action will cause for the local public?		X	
10	Have you contacted regional office and watermaster for comment/concerns?	X		
	Send the watermaster comment request form or e-mail request			
11	Is water right involved in any other department action? Pull file and check database ( ) Ownership Change ( ) Transfer ( ) Mitigation ( ) Other - Explain in comments		X	
12	Narrative The applicant wishes to place the entire right in the Bank. 0.15 cfs and 6.1 acres. The source is Admas Gulch Creek. This water right was decreed in 2010 and was placed in the Bank in 2011. Forfeiture is not an issue.			

**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

October 22, 2015

**RECEIVED**

**OCT 28 2015**

**DEPARTMENT OF  
WATER RESOURCES**

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

**Re: *Kipp M. Nelson, Trustee of the KMN Living Trust- Application to Lease Water Right No. 37-2165D to the Water Supply Bank***

Dear Remington:

Enclosed you will find the original and one copy of the above-referenced Application together with my firm's check payable to the Department for the \$250 filing fee.

Please receipt date-stamp the copy and return it to me in the postage prepaid self-addressed envelope I have included for that purpose. Kindly call me right away if you have any questions about this Application.

Thank you.

Sincerely,

SPECK & AANESTAD  
A Professional Corporation

By:   
James P. Speck

Enclosures  
cc: Clients w/encl.