

DEC 18 2015

DEPARTMENT OF
WATER RESOURCES**WATER SUPPLY BANK LEASE CONTRACT**

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

LESSOR: ROBERT E. SMITH
512 S MILL HOLLOW RD
REXBURG ID 83440
(208) 356-7552

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 29, 2015, 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 |
|-------------|---------------|--------------|-----------|-------------|----------------------|--------------------|
| 22-7336 | 10/22/1980 | Ground water | NA | 1.64 cfs | 287.0 af | 82.0 ac |

Lease Totals 1.64 cfs 287.0 af 82.0 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, 2020. This Lease shall bind the parties and take effect when both parties have signed it.
4. **WATER SUPPLY BANK CONDITIONS OF ACCEPTANCE:** The Lessor shall abide by all terms and conditions contained in the Water Supply Bank Conditions of Acceptance, attached hereto as "Attachment A" and incorporated herein by this reference.
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.

ROBERT E. SMITH
512 S MILL HOLLOW RD
REXBURG ID 83440

By Robert E. Smith

Date 12-12-2015

Printed Name Robert E. Smith

Title Owner

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

By Brian Patton
Brian Patton, Acting Administrator
Idaho Water Resource Board

Date 12/21/2015

Lease approved by IDWR Chy Weber

Date 12-21-2015

ATTACHMENT A WATER SUPPLY BANK CONDITIONS OF ACCEPTANCE

WATER RIGHT NO. 22-7336

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

Lessor: ROBERT E. SMITH
512 S MILL HOLLOW RD
REXBURG ID 83440
(208) 356-7552

Location of Point(s) of Diversion for Water Right 22-7336

GROUND WATER SENESE Sec. 29, Twp 06N, Rge 40E MADISON County

| <u>Water Right</u> | <u>Beneficial Use</u> | <u>From</u> | <u>To</u> | <u>Diversion Rate</u> | <u>Volume</u> |
|--------------------|-----------------------|-------------|-----------|-----------------------|-----------------|
| 22-7336 | Irrigation | 04/01 | to 11/01 | 1.64 cfs | 287.0 af |
| Total: | | | | 1.64 cfs | 287.0 af |

Place of Use to be Idled Under This Lease: IRRIGATION

| Twp | Rge | Sec | NE | | | | NW | | | | SW | | | | SE | | | | Totals | | | | |
|-----|-----|-----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|--------|------|--|--|------|
| | | | NE | NW | SW | SE | NE | NW | SW | SE | NE | NW | SW | SE | NE | NW | SW | SE | | | | | |
| 06N | 40E | 29 | | | | | | | | | | | | | | | | | 27.0 | 21.0 | | | 82.0 |

Total Acres: 82.0

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.

STATE OF IDAHO
WATER RESOURCE BOARD

RECEIVED

OCT 29 2015

DEPARTMENT OF
WATER RESOURCES

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

Designated Applicant Robert E Smith
(Select one owner – see item 1A on the application)

Water Right No. 22-7336
(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.

| MIMUMUM REQUIREMENT CHECKLIST | | |
|--|-------------------------------------|---|
| All items must be checked as either <i>Attached (Yes)</i> or <i>Not Applicable (N/A)</i> | | |
| | Yes | |
| | <input checked="" type="checkbox"/> | Completed <i>Application to Sell or Lease a Water Right to the Water Supply Bank</i> . |
| | <input type="checkbox"/> | 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. |
| | <input checked="" type="checkbox"/> | Confirmation this form has been printed single sided , per requirement of the Water Supply Bank. |
| Attachment | N/A | Yes |
| 1A | <input type="checkbox"/> | <input checked="" type="checkbox"/> Signatures and contact information for <i>all owners</i> of the water right to be leased or sold on this application. |
| 1B | <input type="checkbox"/> | <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 www.idwr.idaho.gov). |
| 1D | <input checked="" type="checkbox"/> | <input 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. |
| 3 | <input type="checkbox"/> | <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: www.idwr.idaho.gov . |
| 4A | <input checked="" type="checkbox"/> | <input type="checkbox"/> Written consent from irrigation district or water delivery company. |
| 4G | <input type="checkbox"/> | <input checked="" type="checkbox"/> Evidence demonstrating the water right has not been forfeited pursuant to <u>Section 42-222(2), Idaho Code</u> . |

| Department Use Only | | | |
|---------------------|---|-----------------------------|--|
| Fee Amount \$ | <u>250⁰⁰</u> | Received By: <u>JStrang</u> | Date Received: <u>4-17-2015</u> Receipt # <u>C100312</u> |
| W-9 received? | Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> | (Route W-9 to Fiscal) | Name on W-9: <u>Robert E Smith</u> |

512 S Mill Hollow Rd
Peixburg ID 83440

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 Robert E Smith

Mailing Address 512 S Mill Hollow Rd Rexburg, ID 83440

Street

City

State

Zip Code

Email Address robsmith@ida.net

Phone Number 208-356-7552

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 _____ Organization _____

Professional Title _____ Email Address _____

Mailing Address _____ Phone Number _____

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.

Currently being leased to the water bank. Land was sold, water rights were retained by applicant

- 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.

- 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. Water has been in water supply bank for 5 years

- 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

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

ATTACHMENT 2

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

| 1. <u>Water Right Number</u> | <u>Nature of Use</u> | <u>Leased Rate</u> (cfs) | <u>Leased Volume</u> (af) | <u>Leased Acres</u> (ac) |
|------------------------------|----------------------|-----------------------------|------------------------------|-----------------------------|
| <u>22-7336</u> | <u>Irrigation</u> | <u>1.39</u> | <u>243.2</u> | <u>69.5</u> |
| | <u>"</u> | <u>.25</u> | <u>43.8</u> | <u>12.5</u> |
| | | | | |
| | | | | |
| | Total Amounts: | <u>1.64</u> | <u>.287</u> | <u>.82</u> |

2. Source of water Groundwater tributary to _____

3. Point(s) of diversion:

| Twp | Rge | Sec | Lot | ¼ | ¼ | ¼ | County |
|-----------|------------|-----------|-----|---|-----------|-----------|----------------|
| <u>6N</u> | <u>40E</u> | <u>29</u> | | | <u>NE</u> | <u>SE</u> | <u>Madison</u> |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |

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: $\frac{2016}{\text{(Year)}}$ to $\frac{2020}{\text{(Year)}}$ (maximum lease period 5 calendar years).

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

current rental rate

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

The Designated Applicant acknowledges the following:

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

Robert E. Smith
Signature of Designated Applicant

Robert Smith
Printed Name

10-27-15
Date

Sally Smith
Signature of Authorized Representative

Sally Smith
Printed Name

10-27-15
Date

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

**STATE OF IDAHO
WATER RESOURCE BOARD**

ATTACHMENT 1A

Additional Water Right Holders Party to the Lease Application

For the water right on this application, list all owners (individuals or business entities) of the right or the property to which it is appurtenant. All water right holders must sign a Water Supply Bank Lease Application. However, only the Designated Applicant needs to provide a completed IRS Form W-9 (Attachment 1B). **All correspondence and any financial payment associated with the rental of this water right will be directed to the Designated Applicant.** If additional space is needed to list any other water right holders, attach a second copy of Attachment 1A.

If submitting multiple applications, it is only necessary to complete one Attachment 1A for the group of applications. List each water right below.

Water Right No(s). _____
22-7336

| | Designated Applicant | Applicant #2 | Applicant #3 |
|-----------------------|--|---|---|
| Name | Robert E Smith | Sally Smith | |
| Mailing Address | 512 S Mill Hollow Rd Rexburg, ID 83440 | 512 S Mill Hollow Rd Rexburg, ID 83440 | |
| Phone Number | 208-356-7552 | 208-356-7552 | |
| Email Address | robsmith@ida.net | sally@ida.net | |
| Applicant Declaration | As Designated Applicant, I submit this lease application on behalf of all other water right holders. | I authorize the Designated Applicant to submit this application on my behalf. | I authorize the Designated Applicant to submit this application on my behalf. |
| Signature | <i>Robert E. Smith</i> | <i>Sally Smith</i> | |

| | Applicant #4 | Applicant #5 | Applicant #6 |
|-----------------------|---|---|---|
| Name | | | |
| Mailing Address | | | |
| Phone Number | | | |
| Email Address | | | |
| Applicant Declaration | I authorize the Designated Applicant to submit this application on my behalf. | I authorize the Designated Applicant to submit this application on my behalf. | I authorize the Designated Applicant to submit this application on my behalf. |
| Signature | | | |

RECEIVED

R: 22-7336

SEP 21 2015

DEPARTMENT OF
WATER RESOURCES

City,

Here's the deed for the
land we sold & retained
the water on as requested.

My sisters later
sold the water to my
husband, Robert & Smith
& myself.

Thanks,

Sally Smith

313-7552

RECORDING REQUESTED BY
First American Title Company

AND WHEN RECORDED MAIL TO:
First American Title Company
127 East Main
Rexburg, ID 83440

First American Title Company

RECEIVED

SEP 21 2015

**DEPARTMENT OF
WATER RESOURCES**

Instrument # 331334
REXBURG, MADISON, IDAHO
2006-09-22 03:55:00 No. of Pages: 4
Recorded for : FIRST AMERICAN TITLE
MARILYN R. RASMUSSEN Fee: 12.00
Ex-Officio Recorder Deputy

Space Above This Line for Recorder's Use Only

WARRANTY DEED

File No.: 180115-RX (ns)

Date: September 21, 2006

For Value Received, Juliann Butler and Sally Ann Smith, both married women, dealing with their sole and separate property, as to an undivided one third interest each and Susann Smith, as her sole and separate property, as to an undivided 1/3 interest, hereinafter called the Grantor, hereby grants, bargains, sells and conveys unto Edge Holdings, LLC, hereinafter called the Grantee, whose current address is 1080 S. Depot Dr., Ogden, UT 84404, the following described premises, situated in Madison County, Idaho, to-wit:

**Township 6 North, Range 40 E.B.M., Madison County, Idaho
Section 29:
S½NE¼; N½SE¼**

EXCEPTING THEREFROM the following 10 parcels:

Parcel 1: Commencing at a point that is S. 0°08' E. along the ¼ section line 1356.0 feet from the NW corner of the NE¼ of Section 29, Township 6 North, Range 40 E.B.M., and going thence S. 15°12' E. 1318.6 feet; thence S. 21°37' E. 1280.0 feet; thence S. 25°07' E. 132.0 feet; thence S. 89°42' E. 443.5 feet; thence N. 05°46' W. 729.7 feet; thence N. 14°31' W. 381.0 feet; thence N. 11°01' W. 736.0 feet; thence N. 03°11' E. 768.58 feet; thence W. 1049.84 feet more or less to the Point of Beginning.

Parcel 2: Commencing at a point 1 rod N. of the SW corner of the NE¼ of Section 29, Township 6 North, Range 40 E.B.M., Madison County, Idaho, and running thence E. 297 feet; thence N. 13°18'33" W. 1301.0 feet; thence S. 0°08' E. along ¼ section line 1266 feet, more or less, to the Point of Beginning.

Parcel 3: Commencing at a point 1 rod N. of the SW corner of the NE¼ of Section 29, Township 6 North, Range 40 E.B.M., and running thence E. 297 feet; thence S. 13°18'33" E. 1 rod, more or less, to the South line of said NE¼; thence W. 298 feet, more or less, to the SW corner of said NE¼; thence N. 1 rod to the Point of Beginning.

Parcel 4: Commencing at a point 298 feet E. of the SW corner of the NE¼ of Section 29, Township 6 North, Range 40 E.B.M., Madison County, Idaho and running thence N. 13°18'33" W. 1317.5 feet, more or less to a point that is 1357.5 feet South of the NW corner of the NE¼; thence N. 0°08' W. 1.5 feet; thence S. 15°12' E. 1318.6 feet; thence S. 21°37' E. to a point on the South line of the NE¼ of said Section 29; thence W. 50 feet, more or less to the Point of Beginning.

Parcel 5: Beginning at a point that is S. 0°08' E. 1356.0 feet and E. 1935.0 feet from the N¼ corner of Section 29, Township 6 North, Range 40 E.B.M., Madison County, Idaho, and running thence S. 3°03' E. 468.0 feet; thence S. 20°48' E. 310 feet; thence S. 12°48' E. 1081.80 feet; thence S. 20°48' E. 254.33 feet; thence S. 67°56'08" W. 218.38 feet; thence N. 27°18' W. 272.32 feet; thence N. 18°53' W. 1163.30 feet; thence N. 5°03'15" W. 792.17 feet; thence E. 307.90 feet, more or less to the Point of Beginning.

Parcel 6: Commencing at a point that is 1335.3 feet South and 2362.5 feet East of the NW corner of SE¼, Section 29, Township 6 North, Range 40 E.B.M., Madison County, Idaho, and running thence N. 13°07' W. 524.0 feet; thence N. 67°56'08" E. 157.65 feet; thence S. 8°47' E. 216.0 feet; thence S. 11°17' E. 224.0 feet; thence S. 13°07' E. 141.0 feet; thence N. 89°37' W. 136.0 feet to the Point of Beginning.

Parcel 7: Beginning at a point which is S. 0°08' E. 2637.64 feet and E. 180.00 feet from the NW corner of the NE¼ of Section 29, Township 6 North, Range 40 E.B.M., Madison County, Idaho, and running thence E. 134.34 feet; thence S. 21°37' E. 147.36 feet; thence W. 188.47 feet; thence N. 0°08' W. 137.00 feet to the Point of Beginning.

Parcel 8: Beginning at a point that is S. 0°08' E. 2637.64 feet from the NW corner of the NE¼ of Section 29, Township 6 North, Range 40 E.B.M., Madison County, Idaho, and running thence E. 180 feet; thence S. 0°08' E. 137 feet; thence W. 180 feet; thence N. 0°08' W. 137 feet to the Point of Beginning. LESS 25 feet on the West side for Shoshone Avenue.

Parcel 9: Beginning at a point that is 1256 feet South and 20 feet East of the Northwest corner of the Northeast Quarter of Section 29, Township 6 North, Range 40 East, Boise Meridian, Madison County, Idaho, and running thence East 345 feet; thence South 100 feet; thence West 345 feet; thence North 100 feet to the point of beginning.

Parcel 10: Township 6 North, Range 40 East, Boise Meridian, Madison County, Idaho. Section 29: A portion of the North half of the Southeast Quarter (N½SE¼), and more particularly described as follows:

Commencing at the Brass Cap marking the center quarter of said Section 29 and running thence along the West line of said North half of the Southeast quarter S0°22'46"E 1318.82 feet to the Southwest corner thereof, last said corner being also the Northwest corner of Harvest Heights Division No. 1 as shown on the Official Plat thereof recorded August 6, 2003 as Instrument No. 305742, Madison County records; thence along the South line of said North half of the Southeast quarter of Section 29, being also the North line of Harvest Heights Division No. 1, N89°44'57"E 394.22 feet to the true point of beginning; thence continuing along last said line N89°44'57"E 225.31 feet to an angle point in said North line of Harvest Heights Division No. 1; thence leaving said North line, and continuing along the South line of said North half of the Southeast quarter of Section 29 N89°44'57"E 219.26 feet; thence leaving said South line N25°20'49"W 137.35 feet; thence North 21°50'49"W 108.38 feet; thence Northwesterly along a curve to the left having a central angle of 90°00'00", a radius of 20.00 feet, an arc length of 31.42 feet, a chord bearing of N66°50'49"W and a chord length of 28.28 feet; thence S68°09'11"W 291.39 feet; thence westerly along a curve to the right having a central angle of 21°36'30", a radius of 134.00 feet, an arc length of 50.54 feet, a chord bearing of S78°57'26"W and a chord length of 50.24 feet; thence S0°09'35"E 119.73 feet to the true point of beginning.

Date: 09/21/2006

Warranty Deed
- continued

File No.: 180115-RX (na)

SUBJECT TO all easements, right of ways, covenants, restrictions, reservations, applicable building and zoning ordinances and use regulations and restrictions of record, and payment of accruing present year taxes and assessments as agreed to by parties above.

TO HAVE AND TO HOLD the said premises, with its appurtenances, unto the said Grantee, and to the Grantee's heirs and assigns forever. And the said Grantor does hereby covenant to and with the said Grantee, that the Grantor is the owner in fee simple of said premises; that said premises are free from all encumbrances except current years taxes, levies, and assessments, and except U.S. Patent reservations, restrictions, easements of record and easements visible upon the premises, and that Grantor will warrant and defend the same from all claims whatsoever.

MEMORANDUM

DATE: September 11, 2015
TO: Water Right File 22-7336
FROM: Clay Webster

RE: Telephone Conversation About Lease application for 22-7336

I received a call from Sally Smith today about the Lease expiration notice that went out. They had submitted a new application for the 2016-2019 seasons in April of this year. I informed Mrs. Smith that we had received the application and that we would need a copy of her deed retaining the water right.

APR 17 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 Robert E. Smith
 (Select one owner – see item 1A on the application)

Water Right No. 22-7336
 (One water right per application)

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

YES

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

Attachment N/A YES

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

Department Use Only

| | | | |
|---|-------------------------------|-------------------------------------|--------------------------|
| Fee Amount \$ <u>250.⁰⁰</u> | Received By: <u>J. Strang</u> | Date Received: <u>4-17-2015</u> | Receipt # <u>C100312</u> |
| W-9 received? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> (Route W-9 to Fiscal) | | Name on W-9: <u>Robert E. Smith</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 ROBERT E. SMITH Email Address Robsmith@ida.net
Mailing Address 512 S. Milk Hollow Rd, Rexburg, Idaho 83440 Phone Number 208-356-7552

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 _____ Organization _____

Professional Title _____ Email Address _____

Mailing Address _____ Phone Number _____

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 22-7336 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.

CURRENTLY BEING LEASED TO THE WATER SUPPLY BANK
THE LAND WAS SOLD BUT WE RETAINED THE WATER RIGHTS

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.

Robert E. Smith
Signature of Designated Applicant

ROBERT E. SMITH
Printed Name

4-15-2015
Date

Signature of Authorized Representative

Printed Name

Date

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

STATE OF IDAHO
WATER RESOURCE BOARD

ATTACHMENT 1A

Additional Water Right Holders Party to the Lease Application

List all individuals or business entities that are owners of the property to which the water right on this application is appurtenant. All water right holders must be signatories to a Water Supply Bank Lease Application however only the Designated Applicant needs to provide a completed IRS Form W-9 (Attachment 1B). All correspondence and any financial payment associated with the rental of this water right will be directed to the Designated Applicant. If additional space is needed to list any other water right holders, attach a second copy of Attachment 1A.

If submitting multiple applications, it is only necessary to complete one Attachment 1A for the group of applications. List each water right below.

Water Right No(s). 22-7336

| | Designated Applicant | Applicant #2 | Applicant #3 |
|-----------------------|--|---|---|
| Name | ROBERT E SMITH | Sally Smith | |
| Mailing Address | 512 S. Mill Hollow Rd Rexburg, IDAHO 83440 | 512 S. Mill Hollow Rexburg, ID 83440 | |
| Phone Number | 208-356-7552 | 208-356-7552 | |
| Email Address | Robsmith@ida.net | sally@ida.net | |
| Applicant Declaration | As Designated Applicant, I submit this lease application on behalf of all other water right holders. | I authorize the Designated Applicant to submit this application on my behalf. | I authorize the Designated Applicant to submit this application on my behalf. |
| Signature | <i>Robert E. Smith</i> | <i>Sally Smith</i> | |

| | Applicant #4 | Applicant #5 | Applicant #6 |
|-----------------------|---|---|---|
| Name | | | |
| Mailing Address | | | |
| Phone Number | | | |
| Email Address | | | |
| Applicant Declaration | I authorize the Designated Applicant to submit this application on my behalf. | I authorize the Designated Applicant to submit this application on my behalf. | I authorize the Designated Applicant to submit this application on my behalf. |
| Signature | | | |

STATE OF IDAHO
WATER RESOURCE BOARD

ATTACHMENT 2

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

| 1. <u>Water Right Number</u> | <u>Amount (cfs/ac-ft)</u> | <u>Nature of Use</u> | <u>Period of Use</u> |
|------------------------------|---------------------------|----------------------|----------------------|
| 22-7336 | 1.64 / 287.0 | IRR. | 4-1 to 11-1 |
| | | | to |
| | | | to |
| | | | to |
| | | | to |

Total Amount: 1.64 / 287.0

2. Source of water Ground Water tributary to _____

3. Point(s) of diversion:

| Twp | Rge | Sec | Lot | 1/4 | 1/4 | 1/4 | County |
|-----|-----|-----|-----|-----|-----|-----|---------|
| 6N | 40E | 29 | | | NE | SE | Madison |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |

4. Acres to be idled within the place of use:

| Twp | Rge | Sec | NE | | | | NW | | | | SW | | | | SE | | | | Totals | |
|-----|-----|-----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|--------|----|
| | | | NE | NW | SW | SE | NE | NW | SW | SE | NE | NW | SW | SE | NE | NW | SW | SE | | |
| 6N | 40E | 29 | | | 7 | 27 | | | | | | | | | | 27 | 21 | | | 82 |
| | | | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | | | |

If the water right is for irrigation, show total number of acres offered to the Bank. Total Acres _____



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

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

C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

December 22, 2015

ROBERT E SMITH
512 S MILL HOLLOW RD
REXBURG ID 83440

RE: WATER SUPPLY BANK LEASE CONTRACT FOR WATER RIGHT 22-7336

Dear Lessor:

Water right 22-7336 was leased into the Water Supply Bank (Bank) as of October 29, 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. **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 that reads "Clay Webster". The signature is written in a cursive style.

for Clay Webster
Water Resource Agent
WSB Process Point of Contact

Enclosure: Executed Lease Contract

c: James Cefalo - IDWR Eastern Region



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098
Phone: (208) 287-4800 • Fax: (208) 287-6700 • Website: www.idwr.idaho.gov

C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

December 9, 2015

ROBERT E SMITH
512 S MILL HOLLOW RD
REXBURG ID 83440

RE: APPLICATION(S) TO LEASE WATER RIGHT(S) 22-07336 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,

FCR - Clay Webster
Water Resource Agent
WSB Process Point of Contact

Enclosure: Proposed Lease Contracts
Receipt # C100312

MEMORANDUM

To: Water Right No(s). 22-7336
From: Michele Edl
Date: 12/7/2015
Re: Review of Application to Lease Water Right to the State Water Supply Bank

PURPOSE/NARRATIVE: On October 29, 2015, IDWR received an application to lease the entirety of the above right to the WSB for 2016-2020. Essentially, the applicants are applying to re-enlist the right for another five years.

AUTHORITY TO FILE and WATER RIGHT VALIDITY: The property to which licensed water right 22-7336 was appurtenant, was sold in 2006 to Edge Holdings, LLC. Then Right 22-7336 was decreed in the SRBA on November 24, 2008 to Julie Butler, Sally Smith and Susann Smith. In essence, the water right was severed from the property at that time.

The entire right was accepted into the WSB in 2010 for a 5-year period. Forfeiture is not an issue.

On September 27, 2011, IDWR received a Notice of Change in Water Right Ownership for decreed right 22-7336. The ownership was changed from Julie Butler, Sally Smith and Susann Smith to Robert E. Smith and/or Sally Smith. The conveyance documents that the Smiths provided were titled "Bill of Sale". Because a bill of sale is not typically the acceptable mechanism for an ownership change, I consulted deputy AG, John Homan. Mr. Homan provided me the attached email opinion. The three Bills of Sale act as three Deeds.

Robert E. Smith and/or Sally Smith have the required authority over this water right and both have signed the application.

INJURY TO OTHER WATER RIGHTS: No injury is apparent.

ENLARGEMENT OF USE: No enlargement is evident through the lease alone. Although the database shows a POU for this right which is located within the City of Rexburg, this right is not associated with any real property.

LOCAL PUBLIC INTEREST: Review staff has no information to suggest this application is inconsistent with the local public interest.

BENEFICIAL USE/CONSERVATION OF WATER RESOURCES: The leases appear consistent with the conservation of water resources in Idaho.

DEPARTMENT STAFF OR WATERMASTER COMMENTS: The right was formerly within the Madison Ground water District. Comments from Eastern Region will be requested.

Edl, Michele

From: Homan, John
Sent: Friday, December 04, 2015 3:48 PM
To: Edl, Michele
Subject: Water Right no. 22-7336

Michele,

After reviewing the three Bills of Sale purporting to convey some interest in the ownership in Water Right no. 22-7336 to the new owners Robert and Sally Smith, the 3 Bills of Sale, although not labeled as Deeds, are effective to convey the ownership interests in the water right. It appears that IDWR has already processed the Ownership change back in 2011 relying on the Bills of Sale as evidence that the water right was conveyed to the Smiths.

John